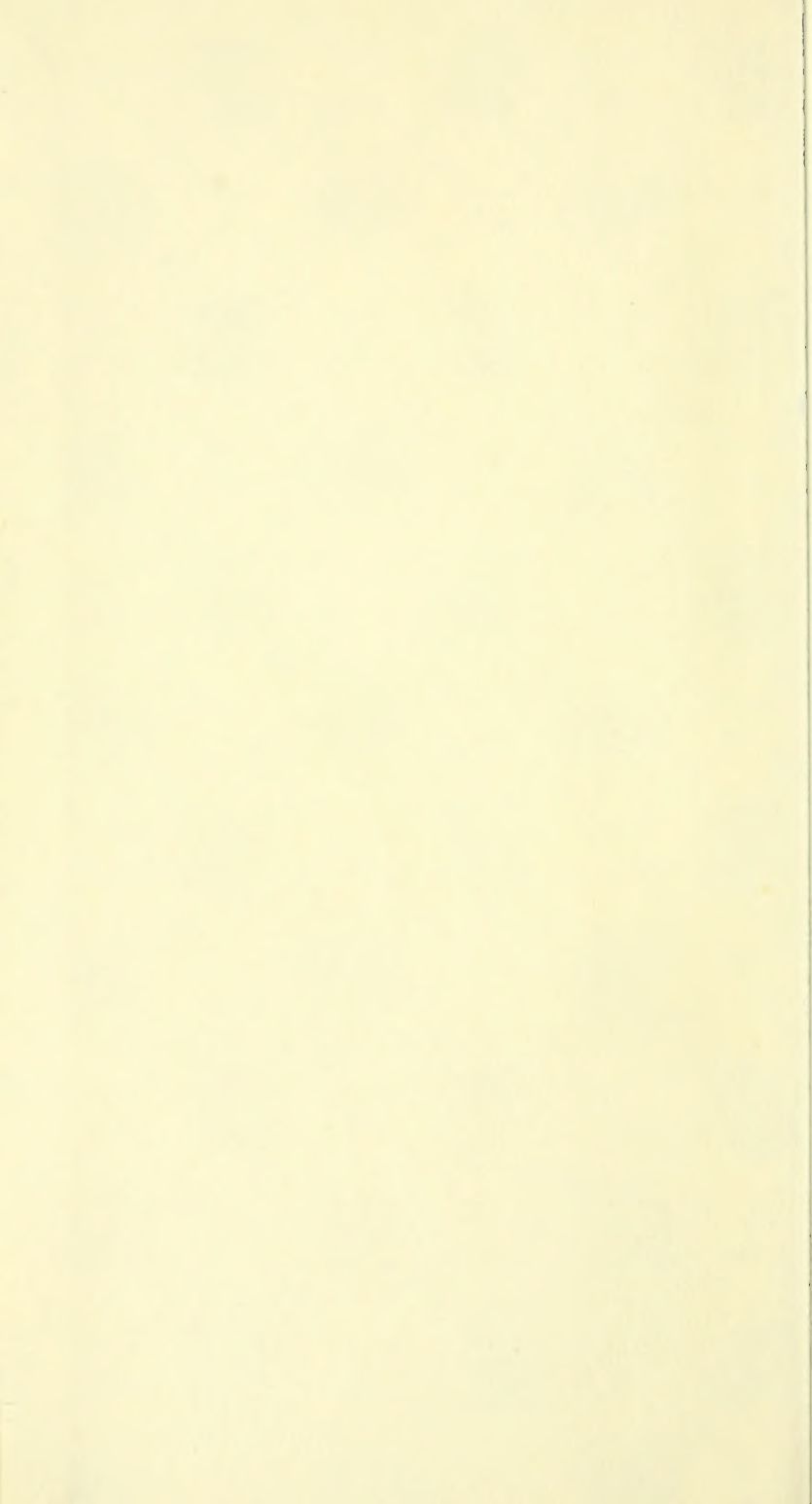






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CIVIL AND POLITICAL

HISTORY OF NEW JERSEY.

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BY ISAAC S. MULFORD, M. D.  
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A. L. E

Recd.

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PREFACE.

BUT few words are necessary by way of preface as an introduction to the present volume. A fondness for historical pursuits, especially such as relate to our own country, was the motive that originally prompted the author to enter upon the undertaking. A part of the material was collected and arranged, with scarcely any other object than the personal gratification and advantage to be derived from the engagement. At length the representations of some friends who were of opinion that such a work would be useful, and would be favorably received, led to its continuance and final completion. The suggestions thus made, were the more readily acceded to by the writer, from a belief, that no such work if executed with a strict regard to truth and fact, could be entirely without value. If no new light should be shed upon the subject, renewed attention to it might yet be excited. It was also supposed that something might be done to aid and favor inquiry. Different works upon the history of New Jersey already exist, and are well known, and perhaps the principal part of the material that can be considered of much importance has already been collected; yet it may be doubted whether it is in such a situation or form, as to render it sufficiently easy of access. Some of these works are limited in period, some are local in their application, being confined, to certain parts of the State, and others are restricted in both these respects. Such as are more extended in scope are different in character and purpose from the present one. Hence it was conceived, that by bringing together from the several sources within reach, the principal circumstances and events of a civil and political character, and presenting them in one view, and

in their natural order and relation, a service would be done, by shortening and lightening the labor of research in the most important department of history. Such has been the present design. The execution of such a work may give but little ground for a claim to originality or learning; no such claim is advanced. No attempt has been made to produce a speculative or philosophical history, but rather to give a simple and compendious narrative. It is hoped that the book may prove convenient and useful, and if so, the object of the author will be gained. Admiration has not been sought. But in justice to himself, the writer may state, that his labor has been conducted in the midst of the duties and calls of another and an engrossing pursuit, and under an engagement, which was too restrictive in point of time; hence faults in manner, and also some inaccuracies will be found, which, under other circumstances, might possibly have been avoided or corrected. It may also be stated, that in order to meet the agreement which had been made in regard to the size of the volume, it was found necessary, especially toward the close, to resort to a greater degree of compression than was consistent with completeness, or with entire perspicuity; for the same reason, matter has been given in notes which properly belonged in the text, and the effect has been a kind of broken or disconnected appearance in several parts. It should also be mentioned, that in consequence of errors in punctuation (which are chiefly typographical,) the meaning of several passages is rendered obscure, and indeed is almost perverted. Some of these errors are noticed in an errata. With these explanations, the volume is submitted, and no doubt is felt that it will be received by the people of the State, and others who may be interested in its history, with a full measure of justice and liberality.

CAMDEN, N. J., 5th month, 1848.

ERRATA.

VARIATIONS IN ORTHOGRAPHY.—Privilege has sometimes been printed privileged—enterprise, enterprize—and maintenance, maintainance.

Page 14, line 35, for successor read successors.

“ 15, line 16, the word it, to come between and, and is.

“ 23, line 8, for is, read are.

In note 10, page 38, a semi-colon to be put after the word down.

Note 10, page 53, line 3 from bottom, for *this* read thus.

“ 10, page 72, for a period, put a comma after the word off.

“ 20, page 79, for Huddle read Hudde.

Page 80, date of protest, for 1683 read 1638.

Note 6, page 98, a comma after the word case, and the word went, between case and by.

Note 16, page 105, for undemnified read undamnified.

Page 134, line 6 from bottom, for *continued* read contained.

“ 154, line 8 from bottom, for the, read a

Note 10, page 158, the word Fort, to come before the words William Hendrick.

Page 159, line 10 from bottom, for *divested*, read devested.

“ 183, lines 4 and 5, for semi-colons put commas after colonel and general,

In note 24, page 211, a comma to be put after the word officer, and Alderman, for Aderman.

Page 215, line 18, for *administrated* read administered.

“ 218, line 12 from bottom, for *been met*, read seen meet.

Note 48, page 228, for *discharges* read discharge.

Page 278, line 4, a semi-colon to be put after the word usage.

“ 283, line 16, for *freeholder*, read householder.

Note 13, page 291, for interests, read interest.

A very noticeable error occurs on page 304, line 16—the words *inhabitants freeholders* should be *inhabitants householders*.

Page 391, line 27, for had, read has.

“ 398, line 1, for *made formally*, read finally made.

“ 496, line 18, the word of, to come between principle and composition.

HISTORY OF NEW JERSEY.

CHAPTER I.

THE ENGLISH DISCOVERIES.

THE discovery of the New World by Columbus, gave a strong impulse to the human mind. An eager and adventurous spirit was at once aroused, and men of different nations came forward to enter upon the new field of enterprise and effort. Amongst the foremost of these persons was John Cabot, a native of Venice, but who had been for a long time, a resident in England. He projected a voyage of discovery and made application to Henry VII. of England, for authority and aid to carry on the design. Very little aid was afforded, but the necessary authority was conferred, without much delay. A commission was issued bearing date the 5th of March, 1495. It was given to John Cabot, and his sons, Louis, Sebastian and Sanchez, committing to him, and to them, and to their heirs and deputies, full authority to sail to all countries and seas of the east, west, and north, under the banner of England. They were allowed to equip "at their own proper costs and charges," five ships of whatever burden and strength in mariners, they might choose to employ. They were empowered to set up the ensigns of England in newly discovered lands, and to possess them as lieutenants of the king.¹ Some time elapsed before the difficulties incident to such an attempt could be wholly

¹ Rymer's *Fœdera Anglorum*.

removed, and the preparations for departure were not completed until the commencement of the year 1497. Of the persons named in the commission two only, engaged in the voyage, John Cabot the father, and Sebastian, the second of the sons. Very little is known as to the particular occurrences of their voyage, no precise account having ever been given, either by the actors themselves, or by any cotemporary. But the enterprise itself is referred to in various authentic documents, and the final event was recorded in terms sufficiently full, and in a manner that entitles the account to perfect confidence and credit. This record was made upon an ancient map drawn by Sebastian Cabot himself, and published, as there is reason to believe, under his sanction, if not by his particular desire. Upon this map was written in Latin, the following words: "In the year of our Lord, 1497, John Cabot, a Venetian, and Sebastian his son, discovered that country which no one before his time had ventured to approach, on the 24th of June, about five o'clock in the morning."² To commemorate the event the discoverers called the land *Terra Primum Visa*; it was a part of the Island now called New Foundland. It is stated by some authorities that so soon as this discovery was made, or very soon afterwards, the voyagers returned to England, making scarcely any attempt to explore the country, or to examine the adjacent coasts.³ Others suppose that Cabot continued immediately to prosecute the voyage; that he pursued a westwardly course until the continent was reached, then, sailing along the coast, advanced high up into the Northern Seas, and finally, proceeded in an opposite direction far toward the south.⁴ A careful comparison of the several accounts conduces to the belief, that the truth is between these extremes. It is beyond dispute that the Cabots were concerned in two voyages performed in immediate succession, and there are many facts tending to show, that the principal dis-

² This map was in a collection in the cabinet of Edward VI. and Sebastian Cabot was in great reputation at the court of that prince, and was entertained by him with much favour. — *Tytler's View*.

It was also "to be seen in her Majesty's privie galleries at Westminster, and in many other ancient merchants houses." — *Hall's*.

³ *Tytler's Historical View*.

⁴ *Holme's Annals, Proud's History, Grahame's Colonial History*.

coveries were made in the course of the second one. Upon the first, the one now under notice, little more was effected than to determine the existence of land in this region, and to notice the insular form of some parts, and the extended appearance of others. This being done, the discoverers hastened to return, in order to announce the success of their venturous attempt. The voyage of the next year was undertaken with more favorable prospects, the king showed greater liberality in his grants, and even engaged to defray the entire expense; the same navigator also, having the advantage of former experience, was appointed to conduct the enterprize. A commission was granted on the 3d of February, 1498, N. S. It was given to John Kabatto, Venetian, and permitted him to take six ships and sail to the land and isles, of late found by the said John, in our name, and by our commandment.⁵ When on the eve of departure, John Cabot from some causes now unknown, found it necessary to relinquish the command and the attempt, and upon this occurrence, Sebastian the son, was advanced to the vacant post. Sebastian sailed from England in the month of May of the same year, and proceeded at once toward the American continent. The exact date of his arrival is not known, but he immediately engaged in exploring the coast. The discoveries he made during the course of this voyage were of great extent. The limit to the north has not been precisely determined there being a singular variance in the several statements made upon the point. This difference is the more remarkable as most of these statements seem to have been drawn from a common source, and this too, being one of the earliest and fullest works.⁶ But the writer of this work though always copious in his details, is not always sufficiently exact. On one occasion he professes to give the account of Cabot himself upon the point in question, it is as follows: "Sailing along the coast toward the north to ascertain if I could find any gulf to run into, I could discover none, and thus having proceeded as far as *fifty-six degrees under the pole*, and seeing that here the coast tended toward the east, I despaired of finding any passage and so turned back."⁷

⁵ Memoir of Sebastian Cabot.

⁶ Viagg. del Ramusio.

⁷ Ramusio tom. 1st.

Yet in another part of his work this author declares, that it was written to him by Sebastian Cabot, that he sailed to the latitude of *sixty-seven and-a-half degrees* under the north pole.⁸ Both these accounts have been followed by succeeding writers. But this difficulty may be solved. Although the distinction is not fully or properly marked, there is yet sufficient reason to believe, that the statements just given do not relate to the same time, or the same voyage. It is known that many years subsequent to the period now under notice, Sebastian Cabot conducted an expedition to this very coast, under the direction of Henry *Eighth* of England, for the purpose of discovering a passage to the Indies. On this later voyage he proceeded farther to the north than he had done before, and then it was he sailed to the latitude of *sixty-seven and-a-half degrees* under the north pole. It may therefore be concluded that the former statement which gives the latitude of *fifty-six degrees* as the limit of the present voyage, may be relied on as correct.⁹ Authorities differ also in regard to the southern limit. The writer already quoted gives, as a part of the statement of Cabot, an express declaration that "he reached the country at present called Florida." But this account is not at all precise, as the country to which the name Florida had been given, was, at that time of undetermined extent. But another author who wrote nearly at the same time, being a cotemporary with Cabot, and also one of his intimate friends, gives an additional account. In this, it is said that the discoverer "coasting still by the shore was brought so far to the south by reason of the land bending much to the southward that it was there almost equal in latitude with the straits of Hercules and that he [then] sailed to the west until he had the Island of Cuba on his left hand, and nearly in the same longitude."¹⁰ This narration is not perfectly determinate and clear,

⁸ Ramusio, tom. 9d.

⁹ According to some authorities, Cabot arrived upon the coast in this voyage in the latitude of *fifty-eight degrees*, but it may be doubted whether this was not in the later voyage performed in the next reign.

¹⁰ Peter Martyr de Orbe Novo. A single glance at the North American continent will serve to illustrate the meaning of a part of the passage here cited. The "bending of the land" is southward to the thirty-fifth degree, which is almost the latitude of the straits of Hercules or Gibraltar, from that point it tends westwardly.

but it imports, that the navigator had arrived near the Island of Cuba, and it is obvious, that with this Island on the left hand, the nearest part of the continent, almost in the same longitude, on his right hand, would be that portion of country to which the name Florida has *now* come to be confined. The southern point of this portion of land is nearly in the latitude of twenty-five degrees.

Cabot did not attempt to establish a settlement within the country he discovered, but he took possession thereof, on behalf of the crown of England.

In the two voyages just noticed the foundation of the English claim to countries in North America was laid. It is of some importance that the origin and character of this claim should be fully understood, and hence it may be proper, before any further advancement is made, to pay closer attention to this primary movement. "The particular right we have to a thing," says a writer of authority, "is either by original or derivative acquisition. It is called original acquisition when a thing which before belonged to no man, begins to be the property of some particular person; it is derivative, when a right of property already established, passes from one to another."¹¹ In its inception the claim of the English nation to land in America was considered as original in its character; in other words, the territory was regarded, and entered upon, as belonging to no one. It was looked upon as entirely new; the inhabitants, which at subsequent periods, were found there, were subdued or conciliated, but a right to the country was supposed to have been acquired, anterior to the conclusion of any treaty, or any attempt at conquest. Discovery, simply considered was made the foundation of title. Whether such a claim could be sanctioned as just, whether it was consistent with humanity and the soundest policy, are questions which it is not necessary just now, to discuss. It is sufficient for our present purpose to determine, whether such a right was acquired as might be maintained in accordance with the usages of civilized countries, and the principles of national law. That according to these usages and laws, discovery, or finding, by an European nation, even where there was pre-occupation by savages, is capable of confer-

¹¹ Grotius.

ring a title to territory, is a point that needs no illustration, and hence there is no other thing to be determined in the present case, than the reality of the finding itself. Considered in this way the matter in question is not such as to require an extended notice; it is nearly determined by common assent. That a discovery was really made at the time, and made by persons acting under a commission from the English crown, are facts that soon became known, and have been generally acknowledged, throughout the civilized world. The only point that is open to doubt is that which respects the *extent* of acquisition. It cannot be pretended that the finding of San Salvador, by Columbus, gave a right to the Spaniards to all the Islands on the American coast, or that the first discovery of the continent by Cabot, gave the English a claim to its entire extent. A claim from discovery must have some limitation. Where a natural boundary exists *that* may be taken as the limit, as in the case of Islands or a close group of Islands, or in portions of territory connected with particular waters. Thus, a voyager who should discover the mouth of a stream upon a coast before unknown, would without farther advance, acquire a claim to the country watered by such stream, and its branches. Where no such natural boundary exists, the actual extent of discovery, is to be mainly regarded. A navigator who may discover a country and proceed along its outline, may lay claim to a right between the points of approach and departure. Upon this principle, the extent of the English acquisition from the discoveries of the Cabots would be, from the fifty-sixth, nearly to the twenty-fifth degree of latitude.

A long period elapsed before any attempts were made by the English, to improve in any way, the possession they had thus obtained. Neither the discoverers themselves or "their heirs or deputies" availed themselves of the advantages which had been granted them. They neither engaged in trade, or endeavoured to acquire a fuller knowledge concerning these lands. Nor was much desire evinced either by the king under whose authority the discoveries were made, or by his immediate successor, to exercise the powers that were vested in the crown. More than half a century was suffered to pass away without farther advancement. But, during this period, several attempts were made upon this

same ground by other adventurers, and it is necessary to notice these movements, both as a part of the history of the time, and also, as they were the foundation of conflicting claims to the country.

The Portuguese were the first to follow in the new track. The people of this nation had become signalized on account of their genius and skill as navigators, and they were ready to seize upon every opportunity that presented, to extend their researches, and add to their renown. The discoveries of Cabot excited their jealousy. Very soon an expedition was despatched by the King of Portugal, under the command of Gaspar de Cortereal, a man of ardent and determined character, and who it is said, was "athirst for glory." This commander made two voyages to the American coast, the first one, in the year 1500. He directed his course so far toward the north, that he only touched upon a part of the English discoveries, and is supposed that he did not advance beyond their limits, at any one point.¹² But the history of the whole enterprize of Cortereal is very imperfect, and in relation to the second attempt, which followed quickly after the first, hardly any thing is known, as the whole company was lost, and no vestige either of the ships or the mariners, was ever discovered.¹³ The brother of Cortereal who sailed soon afterwards with two ships, to determine the fate of his relative, perished in a similar manner.

The French people were the next to enter upon the career of discovery. Only a few years after the discovery of America by Cabot, the Fishermen of Normandy ventured to visit the coast, and in 1508 a mariner named Hubert, carried home one of the natives of Newfoundland, and exhibited him in Paris. But in the year 1523 a more formal undertaking was entered upon.

Francis the First who was then on the throne of France, was a prince of much activity of character, and he engaged in the new pursuit with all his accustomed ardor. He caused four ships to

¹² The most northern point that was attained by Cortereal was probably about the fiftieth degree.—*Bancroft*.

¹³ Almost the only account of the voyage of Cortereal is contained in a letter from Pietro Pasqualigo, Venetian Ambassador in Portugal, to his brother, dated October 19th, 1501.

be fitted out, and placed them under the command of John Verrazano, a Florentine navigator of high repute. The expedition departed at once, but did not arrive on the American coast till the following year, having been delayed by various occurrences. At length, as the commander himself narrates, "he arrived at a new land never before seen by any man either ancient or modern." It is necessary however to take this declaration with some degree of abatement; the particular portion of territory that was seen by Verrazano may not have been visited before, yet, it was within the limits of the British discoveries, and it does not appear that the commander arrived in any part of his voyage, at a country totally unknown. Toward the south, he reached the latitude of thirty degrees, or according to some authorities the twenty-eighth degree. From this point he proceeded along the coast toward the north and was thus led nearly in the same track that had been pursued before by Cabot, though in an opposite direction. He sailed along the whole line of coast as far as to the fiftieth degree of latitude. He landed at several places and held some intercourse with the natives and upon his final departure, gave to the region he had visited, the name of New France.

In consequence of these voyages both the Portuguese and the French attempted to set up claims to land in Northern America. But it does not appear that any actual discoveries were then made. It is certain at least, that within the limits of twenty-five and fifty-six degrees of latitude, (and it is not necessary just now to inquire beyond these limits,) they did no more than visit a country which was already known to another people. Cabot had been in advance both of Cortereal and Verrazano, and had claimed the country on behalf of the British crown. As discoverers then, neither the Portuguese or the French could justly pretend to any title, and their attempts at this time were not such as to warrant a claim upon any other ground. They made no efforts to secure possession; they effected no settlement, and after a brief visit left the country entirely.

But after a further period of ten years the French renewed their attempts, under the direction of Jacques Cartier. It was the purpose of Cartier to penetrate into the country and establish a settlement. Accordingly, after exploring the coast, and discover-

ing the mouth of a river which he called the St. Lawrence, he ascended the stream, took possession of a portion of territory and erected a fort. Upon a second visit he penetrated still farther, and opened an intercourse with the native tribes, and finally, in conjunction with a noble of France, he settled a colony of Frenchmen, near the site of Quebec. This whole undertaking was finally abandoned, but it had been persevered in for so long a time as to give some color to a claim from possession. Yet it could hardly be considered such a "long uninterrupted and undisputed possession" as would be necessary to give a sufficient title, even to the territory actually occupied.¹⁴

Beside the nations already mentioned, the discoverers of Southern America, the Spaniards, had extended their researches and efforts so as to come within the bounds of the English discoveries. So early as 1512, Ponce de Leon one of the companions of Columbus, had advanced toward the north and entered upon a country which he claimed in the name of the Spanish king, and which he called Florida. He was succeeded by other adventurers who advanced still farther. Florida became a theatre of contest between different bodies of Spaniards and French, and at the end of these struggles in which much blood was shed, only one small colony remained. This was a Spanish settlement, and finally survived.

From the statements just made the conclusion may be drawn, that no such claim was acquired by the Portuguese, the Spaniards, or the French within the countries discovered by the English, as could extinguish, or materially affect the rights of the latter, at least, so far as the greater part of the territory was concerned.

The final acquiescence in the possession of Florida by the Spaniards led to the loss of a portion of territory in the south, but this did not effect the rights of the original claimants to the remainder of the country. The settlements made by the French on the St. Lawrence, were abandoned at so early a period, that a

¹⁴ The entire period of the French occupation at this time was only about ten years, and, even this was broken by several interruptions. This fell far short of the conditions necessary to a claim from possession.

right from possession had not become established, and hence in that direction, the claims of the discoverers would still survive.

But another question presents itself to notice. Did the claim of the English continue in force during the whole interval of time between the date of the original discovery, and that of entering, and taking possession; or was it lost from non-usage and lapse of time? Some authorities have represented a right from discovery as being of so imperfect a nature, as to be nearly incapable of distinct existence. It has even been laid down a general principle or rule, that the property and sovereignty of a nation cannot be acknowledged over any newly discovered lands except those of which it has really taken possession, on which it has formed settlements, or of which it makes actual use.¹⁵ The acknowledgment of this principle would be entirely to destroy and extinguish the right in question, or at least, to render it of no value or force; its virtue would then be made to depend upon some other, some subsequent act, or thing. But this doctrine is by far too strongly stated. Discovery does certainly confer a right, and one that is distinct and independent, though it may be lost in consequence of neglect and the lapse of time. The period of its existence has not been precisely determined. Some authors limit its duration to what they call "a reasonable time," but this is a mode of expression that fixes nothing, as a reasonable time can only be determined by particular circumstances, and will therefore vary in the several cases that may come into view. If, during a period of general activity a nation should overlook or neglect a possession; no disposition whatever being shown to assert or maintain a claim, a presumption will soon arise that its claims have been abandoned. But during a period of general repose, when nothing occurs to call for vigilance or notice, then, the mere quiescence of a party cannot be rightfully construed as an abandonment of claims. The "reasonable time" must be somewhat extended under circumstances like these. The principles and views above given may be applied to the case under notice.

The movements of the Portuguese, the Spaniards, and the

French, which have already been mentioned, were made at a comparatively early period, and subsequent to these, nothing was done in Northern America, until the advent of the English themselves. There was a long period of general tranquility, nothing occurred to urge to immediate or speedy action, and the "reasonable time" allowed for such action, would hence be prolonged.

At the very least, if the English title could not be considered, throughout the whole of this period, as being sufficient to bar the advances of other nations, had such advances been made, yet, in the absence of such, it continued so far in force, as to warrant the English themselves in entering the country and perfecting a title, by use and possession.



CHAPTER II.

POSSESSION BY THE ENGLISH.

AT length a period arrived when the English people resolved to take fuller possession of their American territories. The reign of Queen Elizabeth was to be marked, in addition to other successes, by the execution of this design. In the year 1577, an enterprize was projected to establish a settlement, and the course of procedure adopted at the time, was such as brought at once into view, some of the most important principles of British colonial policy. Application was made to the Queen by Sir Humphrey Gilbert, an individual who was distinguished for his generous qualities, and an ardent love of adventure. To this person a grant was made in a formal instrument which was described in its title, as "Letters Patent granted by her Majesty to Sir Humphrey Gilbert, Knight, for the inhabiting and planting of our people in America." It was dated June 11th, 1578. This instrument gave to Sir Humphrey, the full right to certain portions of lands, and also, full authority for the establishment and maintainance of government. It conveyed to the said Sir Humphrey, his heirs and assigns, and every of them, forever, the right to hold and enjoy all such lands, countries, and territories as he should discover, not actually possessed by any christian prince or people. It vested in the said Sir Humphrey, his heirs and assigns, the full right of property in the soil of these countries which he and they were to hold of the Crown of England by homage, upon condition of paying one fifth of all the gold and silver ore found there. It conferred complete jurisdiction within the said lands, and the seas adjoining them, and gave full authority and power to correct, punish, pardon, or rule all such persons as should adventure within, or inhabit these lands, and that in all causes, capital or criminal, as well as civil. It gave power to make all statutes, laws, and ordinances, for the better government

of the people, provided, however, that "the said statutes, laws, and ordinances, should be as near as conveniently may, agreeable to the laws and policy of England."

The question naturally arises, whether it was within the proper scope of royal authority to confer a grant so comprehensive and full, as was this. The nature and extent of the English claim to land in America have been already considered. This claim so far as it continued in force, had been received by the sovereign now on the throne, in the common course of descent, and the royal authority in these lands was founded on the same laws that existed, and were in operation, in other parts of the realm.

The territory in America could only be regarded as a part of the dominion subject to the crown, and subject as were other parts, to the powers that belonged to the crown. Hence, to inquire whether the sovereign could make such a grant as that conferred upon Sir Humphrey Gilbert, is only to consider in a particular mode, the real extent of the royal prerogative. Queen Elizabeth herself was wont to say "that the Parliament ought not to deal, to judge, or to meddle with her Majesty's prerogative Royal;" and her successor, James, declared that "as it is Atheism and blasphemy in a creature to dispute what the Deity may do, so it is presumption and sedition in a subject to dispute what the king may do, in the height of his power." "Good christians," he says, "will be content with God's will revealed in his word, and good subjects will rest in the king's will revealed in the laws." But notwithstanding these pretensions, the royal prerogative was really restricted within determined bounds, and some of these restrictions had existed from the earliest period. Thus, the great Saxon king, distinctly acknowledged, that there was no great man *nor any other in the whole kingdom*, that could abolish written laws. It was a part of the oath administered to the Saxon kings at their entrance upon the government, that they should "maintain and rule according to the laws of the nation." In the year 1215, King John had been compelled to sign the Charter which from its importance, has ever since been denominated *Magna Charta*. In this charter the limitations of the royal prerogative were distinctly laid down, and at subsequent periods other restrictions had been added, and assented to. And at the very time that King

James put forth his arrogant pretensions, his people and their representatives in Parliament were far from assenting to his principles and his course.¹ But it does not appear that in the act of Elizabeth in which she gave a title to land, and granted authority to rule, the rightful authority of the sovereign was really exceeded. A title to land was granted by the English monarchs in their character as Lords Paramount. "All the lands in the kingdom," it is said, "is supposed to be holden mediately or immediately of the king, as Lord Paramount."² That the holder of the crown was to be regarded as the original proprietor of *all* the lands in the kingdom, could hardly be considered as more than a fiction of law; yet the public domain comprizing those lands which remained unappropriated, was held by the king, and was distributed according to his pleasure. According to the theory of the British government, all vacant lands were vested in the crown, as representing the nation, and the exclusive power to grant them was admitted to reside in the crown, as a branch of the royal prerogative, and under such grant the subject could take, hold, and possess these lands in full propriety. This continued to be the case long subsequent to the time of Elizabeth, and until the passage of the statute of Queen Anne, in the year 1701. In consequence of this statute, the power of the sovereign over the lands in question, became measurably restricted.

As a grant of property then, the patent given to Sir Humphrey Gilbert was issued in accordance with law, or least without any violation of law. The other part of the grant, the power to establish government, was based upon similar grounds. It did not belong to the king, as a part of his prerogative, to determine the form of government, throughout his entire dominions; but the laws and customs of the country allowed a different exercise of power, in different parts of the kingdom. Counties Palatine had

¹ "The king thought that the lavish tongues of men pryed too narrowly into the secrets of his prerogative which were mysteries too high for them, being *res sacre imperii*, fitted to be admired rather than questioned. But the Parliament were apprehensive enough that these hidden mysteries made many dark steps into the people's liberties, and they were willing by the light of law and reason to discover what was the king's and what was theirs." *Pol. Hist.*

² Blackstone.

their own rulers and laws; some places were not affected by acts of Parliament, unless specially named therein, and where possession was taken of vacant territories, the king, *jure coronæ* had the power of instituting government therein, provided that such government was consonant to English usages and laws.

The patent now granted by the Queen, gave authority for the establishment of a proprietary government, a form in which both property and power are placed in the same hands. "Proprietary governments," says a high authority,³ "are granted out by the crown to individuals, in the nature of feudatory principalities, with all the inferior regalities, and subordinate powers of legislation which formerly belonged to Counties Palatine, yet still with these express conditions that nothing be attempted which may derogate from the sovereignty of the mother country."

In its general scope then, the grant to Sir Humphrey Gilbert was sanctioned by the customs and laws of England.

Very soon after the reception of the patent, Gilbert made a voyage to America, but in consequence of disasters met with in the course of his voyage, he was compelled to return without effecting a settlement. But soon afterwards he renewed the attempt. In the year 1583, he departed from London, and after a more prosperous voyage, arrived in America with a company of two hundred and sixty persons. He took possession of St. John's, in Newfoundland, and made proclamation of his right and title to the country.⁴ He proceeded at once to exercise his authority, and enacted three principal laws for the government of his colony. By the first of these, public worship was established according to the Church of England, by the second, the attempting of any thing prejudicial to her majesty's title, was declared to be treason according to the laws of England; by the third, the uttering of words to the dishonor of her majesty, was to be punished with loss of ears, and the confiscation of property.

These were the first laws ever made and promulgated in the

³ Blackstone

⁴ Gilbert says, "On the 5th day of August I entered here, in the right of the Crown of England, and have engraven the arms of England

Letter to George Peckham

country. They form a brief code but a rigid one, and these laws are worthy of notice, not only from their position in legislative history, but also as an exhibition of the temper of government, at that time. They show the measure of liberty in thought, and word, and deed, that was then allowed to the subjects of Britain.⁵

But Sir Humphrey Gilbert did not live to bring his government into actual operation. He was lost soon afterwards in an attempt to return to England, and the enterprize he had engaged in, totally failed.

The next effort for the establishment of a colony in America, was made under the direction of Sir Walter Raleigh. It may be that the grant to Raleigh, who was the half brother of Sir Humphrey Gilbert, was designed, in part, as an extension of that which had been made to the latter. Whether so or not, the conditions were nearly the same. Raleigh's grant was conveyed by an instrument which bore the name or title of "Letters Patents graunted by the Queenes Majestie to M. Walter Raleigh now Knight, for the discovering and planting of new lands and countries, to continue the space and time of six yeers and no more." Dated March 25th, 1584.

The condition of this grant in respect to time, was not designed as an absolute limitation, it meant no more than that the undertaking must be *entered upon* within the time mentioned.⁶ Raleigh was a man of vigorous and ardent mind, and he immediately prepared to make use of the advantages given in his patent. He

⁵ It would seem that the people with Gilbert were well satisfied with his enactments. It is said, "that obedience was promised by generall voyce, and consent of the multitude, as well of Englishmen as strangers, praying for the continuance of this possession, and government begun."

⁶ It is asserted by Stith, (*Stith's Virginia*), that "on the 11th of September, Raleigh's Patent was confirmed in Parliament, and a proviso added." The reason of the application to Parliament is not given. It could hardly have been supposed that a confirmation by Parliament was necessary in order to give validity to the instrument, and the "proviso" might have been added by the Queen, by the same power that enabled her to make the original grant. But whatever may have been the cause of the application, it affords the first example of the action of Parliament in the affairs of America.

equipped and sent out two ships under the command of Captains Armidas and Barlow. They arrived on the American coast on the 4th of July, 1584. They landed at several places, and examined the surrounding country, they had frequent and friendly interviews with the native tribes, and engaged in some traffic. At their return, the English commanders made a most favorable report, and Queen Elizabeth directed that the country they had visited, should be called *Virginia*. The portion of territory to which this name was given, extended from the thirty-fourth to the forty-fifth degree of latitude.

Raleigh engaged in several attempts to colonize Virginia. Acting either singly, or in concert with others, he caused several bodies of men to be sent out at different times and settled in the country. These colonies maintained their positions for a time; the settlers erected forts and dwellings, acquired a knowledge of the land, and of the natives, and made some feeble attempts to establish government. But in the end, the enterprize was wholly abandoned. Some of the colonists perished from exposure and want, others from the hostility of the savage tribes, and the survivors embraced the first opportunities that offered to return back to England.⁷

It was the error of Raleigh and his associates that they failed in a proper concentration of means. Their resources and their efforts were great, but they were expended in repeated and distant attempts. No one of the bodies sent into the country was possessed of sufficient strength to ensure success, yet they were not sustained by timely assistance. Of consequence, these bodies fell by successive disasters, and each time the ruin was so complete, as to destroy not only the labors of the past, but also all hope for the future; so far as these bodies were concerned, all expectation was extinguished.

It is commonly stated that Raleigh's Patent was afterwards forfeited in consequence of his attainder. But before the final dissolution of the colonies established by him, he had made an assignment of his privileges and rights (with some reservations) to Thomas Smith, and other merchants and adventurers. This assignment was made on the 7th of January, 1597. The colonies attempted or effected but little, and at length either relinquished their claims, or became parties in the companies subsequently formed.

About this period the pretensions of the French were again advanced. In November, 1603, Henry IV. of France made a grant of territory upon the American continent to the *Sieur De Monts*, a gentleman of the Bedchamber. This grant extended from the fortieth to the forty-sixth degrees of latitude. De Monts was constituted Lieutenant General, with power to colonize and rule the country, and to subdue and christianize the native inhabitants. De Monts himself was a Calvinest, but he agreed to establish the Catholic religion within the new lands. He made a voyage to America with a company of adventurers, and effected a settlement which however was soon afterwards abandoned.

The re-appearance of the French at this time, manifested a disposition to persist in their claims upon the American continent, and the attempt just noticed, together with others that succeeded, eventually led to a disbute between England and France which was finally determined by an appeal to the sword.

For some years subsequent to the issue of Raleigh's attempts, Virginia was almost entirely neglected. Different navigators visited the country, among whom Bartholomew Gosnold deserves to be particularly noticed; but no new settlements were made, and finally, at the close of the reign of Queen Elizabeth, it is doubtful whether a single Englishman remained within the limits of Virginia, or indeed in any part of Northern America. Yet the efforts that had been made were not without fruit. The country had been brought into notice, a period of actual possession had given additional strength to the English title, the settlers had examined the lands, and the difficulties to be encountered had become known from actual trial. The first adventurers had suffered, and many of them had perished; they had not been able to secure the country for themselves, but they had rendered the way to possession more easy and safe to others.

The beginning of a new reign was also the beginning of a new era in colonial history, an era of much vicissitude but marked by ultimate success.

In the year 1606, application was made to James the First, by divers persons, for authority to engage in a new attempt to colo-

nize Virginia. The king "greatly commended and graciously accepted their desires, for so noble a work." A patent was soon afterwards issued by which Virginia was divided into two nearly equal parts, and each portion was assigned to a separate company. The "First," or southern division which extended from the thirty-fourth to the forty-first degree, was granted to a body called the London Company. The "Second," or northern division extended from the thirty-eighth to the forty-fifth degree, and was assigned to an association designated by the name of the Plymouth Company. It is evident that these grants were conflicting, as they both extended, in part, over the same portion of territory. The portion so situated was that between the thirty-eighth and forty-first degrees of latitude, and included the present States of Maryland, Delaware, Pennsylvania, and *the whole of New Jersey, except a triangular portion at its northern point.*^{*} But a direct collision between the companies was prevented by a condition, that one should not form a settlement within one hundred miles of a colony planted by the other, and after a period, their limits were reduced to entire accordance, as will hereafter be noticed.

The patent gave to these companies the full right of property in the soil extending fifty miles on each side of the place of settlement, and reaching one hundred miles into the interior country. The companies were authorized to transport to their respective territories as many English subjects as should be willing to adventure. They were also allowed to export from England whatever was necessary for the defence or sustenance of the colonies, without paying duties, for the space of seven years.

The government that was established was distinct in name and form, from the companies, and was of a character not a little singular. It was a sort of Vice Royalty but composed of different bodies, and embracing a large number of members. One body having general authority, was to be established in England, and

^{*} It is to be observed, however, that the patent did not define the limits of the grants toward the west. These portions only that were specifically given to the companies, were defined in that direction.

two others, one in each of the provinces, with subordinate jurisdiction. These bodies, called councils, were to consist severally of thirteen members, all to be appointed by the king. The councils were to administer the government according to a rule contained in ordinances and instructions signed with the royal hand, or the sign manual, and passed under the privy seal. By this code of instruction, the provincial councils were empowered to make all necessary regulations for the provinces, provided that they should be consonant to the laws of England, and subject to revision by the king or the supreme council in England. The councils were also authorized to levy duties on foreign commodities, and the amount thus raised might be used for the benefit of the colonies, for the space of twenty-one years, then, to be paid into the royal exchequer. They were to superintend and direct the distribution of lands among the settlers, and all lands that were granted out were to be held in free and common soccage only, and not in *capite*. They were to administer justice according to British customs and laws, and to establish Divine worship in conformity with the doctrines and rites of the Church of England. The colonists and their descendants were to have and enjoy all liberties, franchises, and immunities in the same manner as if they had remained, or been born, in England.

The conditions of the patent may be considered as they related to the company, and as they affected the settlers generally. In the former respect, the grant was sufficiently favorable, in view of the objects pursued. There is reason to believe that the companies did not contemplate the establishment of independent and prosperous communities, so much as their own particular advantage; they sought to secure for themselves, the real or imagined treasures of the new world.

Some of the provisions in relation to the settlers were such as to do honor to the royal grantor, but they were rendered of little effect from their incongruity with others. Lands were granted upon the freest tenure. All the rights and franchises of English subjects were also fully conceded, a grant however which it was scarcely necessary to make.

The liberties and franchises of Englishmen were not to be given

or withheld at the pleasure of the king; they were secured to every one by the laws of the realm, and the claim to them was neither lessened or lost, in the remotest parts of the kingdom. In conferring them, the king did but give, what the subject had a right to enjoy, either with, or without his grant. Yet, notwithstanding this, and notwithstanding the royal concession itself, the patent, in some of its provisions, was a virtual denial of the rights and immunities of Englishmen. It established a rule in which the people had no participation, either direct or remote. The whole government was in the hands of bodies appointed by the king, and holding and using their authority at his discretion; the royal element in the English government would therefore exist in the province to the exclusion of all the others. This indeed might amount to little more than a negative evil so long as the action of government was properly bounded; so long as it continued within the limits which marked out the sphere of royal authority. But these limits were not observed. New powers were assumed, and hence the colonists were reduced to absolute dependence upon the clemency or discretion of the king, except in a few particulars.

But these objections to the charter granted at this time, were but little regarded, and it was under the authority of this instrument that the first permanent settlement within the limits of the British possessions was made.

This enterprize was carried on by the South Virginia, or London Company. Three ships were sent out under the command of Christopher Newport, carrying a body of emigrants, one hundred in number. The expedition arrived in the bay of Chesapeake on the 26th of April, 1607.

Presently after landing, a situation for a settlement was sought out, and the place selected was called Jamestown, in honor of the king. The colony here planted was the first to take firm root in the country. The history of its early struggles cannot here be pursued, but it would be unjust to pass on without some notice of one individual. John Smith, one of the members of the Colonial Council, was a man who from nature and from previous habits, seemed to be fitted for the time, and the place. He had great

energy and determination, and was accustomed to strenuous effort. He shrunk from no trial or danger, and amidst the difficulties and perils of this period bore up the spirits of the people, and more than once preserved the colony from ruin. His prudence too, was equal to his vigor; whilst he boldly explored the country and kept the savages in awe, he directed the interests of the settlers, urging them to cultivate the lands, and to rely upon their own labor as the only sure means of success. He may be regarded as the true founder of this settlement, and indeed, as a chief leader of colonization in the new world.

After a trial of three years, the South Virginia Company became dissatisfied with the state of the colony, and upon application to the king, they received on the 23d of May, 1609, a new charter containing a grant of additional privileges and powers. The company was made "one body or commonalty perpetual," and was incorporated under the name of "The Treasurer and Company of Adventurers and Planters of the City of London, for the first colony of Virginia." To this body an absolute title was given to the territory extending from Point Comfort, two hundred miles to the north, and the same distance to the south, and reaching westwardly from sea to sea.

This grant differed from the former one in several particulars. The whole of the lands included within the limits just mentioned, were given absolutely to the company as property; before, a small portion only was thus granted. The limits also were enlarged in some directions, but were reduced toward the north; two hundred miles from Point Comfort northwardly, would only reach to the fortieth degree of latitude, whereas the former grant extended to the forty-first degree.

The territory between the fortieth and forty-first degrees, in which *more than one half of the State of New Jersey was included*, fell from the time of this grant, under the sole authority of the Northern Virginia, or Plymouth Company. Before this, both the Virginia companies had a claim within this extent. Hence, from the time of the second grant to the Southern Company, the country which is here to be particularly noticed, belonged, in part to one company, and in part to the

other, the fortieth degrees of latitude being the line of division between them.⁹

Such was the situation of affairs when a new company of explorers made their appearance, as will be noticed in the ensuing chapter.

⁹ The extensive grant that had been made to the Northern Company was reduced by the positive limitation of the second patent to the Southern one, and thus by a loss and gain between the two bodies, the limit came to be fixed as is here mentioned.

CHAPTER III.

THE DUTCH CLAIM.

IN the year 1609, Henry Hudson, a native of England, visited the American Continent with a view to the discovery of a north-west passage to the Indies. The discovery of a continent of almost measureless extent, and teeming with all the elements of wealth, had not lessened the desire of the people of Europe to reach and to share the riches of "the gorgeous East." To find a more direct passage to that region, was an object which continued to claim the attention and to excite the efforts of governments and of corporate bodies, as well as of private adventurers. Hudson had already been repeatedly engaged in these attempts. On his present voyage, he proceeded closely beside the American coast, and examined the appearance and direction of some of the principal streams. On the 28th of August he entered "a great Bay," the same to which the name Delaware was afterwards given.¹ But he did not explore the stream to any extent, finding it to promise but little in reference to the special object he had in view, and after a brief survey, he proceeded onward in a northwardly direction. On the 12th of September he entered a bay farther north, the Bay of New York, and discovered the river which still bears his name. After exploring this stream and holding some intercourse with the natives upon its shores, the commander descended and immediately put to sea, and proceeded to Europe.²

¹ The next year after the voyage of Hudson, Lord Delaware touched at this bay on his passage to Virginia. It is probable that either he or some of his company gave his name to the bay at that time, for about two years afterwards, in May, 1612, it was mentioned by the name of Delaware Bay, in a letter written by Captain Argal, from Virginia. The letter is given in Purchas.

² It is to be observed that Hudson proceeded at first, from north to south, he afterwards changed his course and ran in an opposite direction. In the first part of his voyage—he made the land first in the latitude of forty-four degrees, fifteen

Very different statements are given by writers as to the particular circumstances connected with this voyage. It is asserted by some that Hudson had been sent out with an English commission, but that he afterwards sold the country he had explored, together with all his maps and charts, to a foreign people, the Dutch. Others declare that he had been employed by the Dutch, at first.

The question arising from these statements is not without importance. If Hudson had sailed with a commission from his own government, and was acting as an English subject, the benefit of his services must have accrued to his own sovereign. Under these circumstances, no sale to another people, had it been made, would have been of the slightest force; it would only have been a transfer of that to which the vender had no right, and having none himself, none could have been conveyed to others.

But in fact, though, Hudson had formerly been employed by a company of merchants in London, and had made two voyages of discovery on their behalf, he was not, at this time, in the English service. He had left his own country and entered into an engagement with a commercial company that had been formed in Holland, called the East India Company, and it was during his engagement with that body that the voyage now under notice was made.

But another difficulty has here been started. Hudson, as already stated, was a native of England, and it has been contended by some, that he could not transfer his allegiance as a subject so far as to give an important claim, to a foreign people. But this objection is not well founded; it is opposed to the uniform usages of nations. According to these usages, when a discovery has been made under authority from any people or prince, the whole benefit has been claimed by the principal, without the least regard to the nativity, or the previous obligations, of the agent employed. Columbus was not a native of Spain; Cabot was not

minutes, and there went on shore. The next land he discovered was Cape Cod, which he supposed to be an island, and called it New Holland. After that he reached "Dry Cape," or Cape Charles, not far from which the English had settled three years before. On his return he examined Delaware Bay, afterwards the Bay of New York, and Hudson River.

an Englishman, and Verrazano did not belong by birth to France. Yet the claims of these nations have never been disputed on that ground, and there is nothing in the present case to exclude *it* from the operation of the general rule.³

But, whilst it is allowed that the benefit accruing from the voyage of Hudson belongs to the Dutch alone, an important question is still to be determined. The claim such as it is, must be conceded, yet this concession is of no weight in relation to the value of the claim itself.

It may be that Hudson was the first to enter the Bay of Delaware, and to ascend the North River, it may be that the people with him were the first Europeans that ever set foot upon the shores of New Jersey, or New York, but this is by no means sufficient to determine the question of right to the territory.⁴

³ The only peculiarity in the present case is this. Hudson was not acting under the authority of government, but under the direction of a commercial company. Yet this company had been established upon a grant from its own government, and except so far as exclusive privileges had been given to this body, the claim that was acquired must be considered as a national one.

⁴ There is reason to believe that Hudson was not really the first to visit the country within the limits of New York. *Those* (speaking of the French with Verrazano) were probably the first European feet that ever trod upon any part of the territory now included within the State of York.—*Miller's Discourse*.

The first house erected and the first soil cultivated by any Europeans within the limits of New York, and indeed the first particular examination of any part of New England, were by Bartholomew Gosnold, one year before the death of Queen Elizabeth, one hundred and ninety-five years afterwards, in 1797, Dr. Belknap discovered the cellar of the house that had been built by Gosnold on one of the Elizabeth Islands, and some vestiges of it were found by a party of gentlemen who recently visited the spot.—*Yates and Moulton*.

In reference to the North River and the country upon *it*, it has also been said, "That there was of very early and ancient times, the beginning whereof is not known, a settlement and plantation on the Delaware, made, planted, and inhabited by the Swedish nation and afterwards held and inhabited *in the year one thousand six hundred and nine*, and for many years afterwards by christians under the dominion of the States General of Holland."—*Bail in Chancery by the Penns, against Lord Baltimore, 1735*.

It is also said that this place was visited before the advent of Hudson, by Sir Walter Raleigh. The Baron De la War, Sir Thomas Dale, and Sir Samuel Argal. But most of these statements are erroneous, and others are merely conjectural. It is not known that the country upon the Delaware, had ever been visited by Europeans before the coming of Hudson; but it is thought probable that Verrazano had touched upon the northern part of the shore of New Jersey

The territory in question formed but a part of the country originally discovered and claimed by Cabot on behalf of the British crown. No country can be twice discovered, unless history should fail; the annals of an age or a people may perish, and thus the particulars that mark the nature of a claim, and even the claim itself, may be utterly lost from the knowledge of men. Then, in succeeding times, an entirely new claim may again arise and be successfully maintained.

It is conjectured that the Northmen had visited the shores of America long prior to the advent of Columbus and Cabot, but the fact, if fact it be, is only sustained by a faint tradition which modern nations have ceased to regard.

But such was not the case with the British discovery; it continued to be known, and it was fully known to the Dutch at the time of the voyage of Hudson.

But the claims of Hudson as a discoverer have sometimes been urged upon a different ground. According to the regulations of European law, it is said, the discoverer of the mouth of the stream acquires a right to the territory connected with such stream and its branches, and hence, that the country upon the Delaware, and the Hudson, in accordance with the rule in question, would belong to the Dutch.

The regulation is acknowledged, but it does not apply to the case. It will only apply where there has been a real, original discovery, where the coast, and the country connected with the stream have before been unknown.⁵ It cannot be supposed that the discovery of the outlet of a stream would give a right to the territory along its entire extent, although such territory had been known and claimed before. This would be unjust and indeed absurd. The regulations of European law give no support to such a pretence.

But another point is still to be noticed. It may be supposed that so long a period had passed from the time of the original discovery by Cabot, that the claim of the English had lapsed, and in consequence that though the claim of the Dutch as discoverers

⁵ See p. 14.

should not be allowed, they yet might come in and acquire a right from occupation and use.

The duration of a claim from discovery has already been sufficiently considered.⁶

But, at this time, the rights of the English to this part of the American continent did not rest upon discovery alone, there had been actual appropriation and possession. Portions of territory had been granted at different times by the English sovereign, to certain individuals or bodies, and these grants had been made by formal conveyances, describing the situation and extent of the lands so as to fix their place and extent. In this manner the very portion of country that was visited by Hudson had been granted and conveyed. Most of it indeed had been repeatedly granted. Not to mention the ill defined conveyance to Sir Humphrey Gilbert, it had been given to Sir Walter Raleigh as a part of Virginia; afterwards to the North and South Virginia Company, and was divided between them as already described, and finally, only a few months before the visit of Hudson,⁷ a second grant had been made to the South Virginia Company, and in this, the precise spot was included which seems to have been regarded as the starting point of the Dutch possessions.⁸ Upon the territory which had thus been granted, English emigrants had actually settled, and were then in possession. The possession indeed was not such as that every part of the territory was taken up; nor was this necessary. "A country," says a learned authority, "is taken possession of either in the lump or by parts. But if in a country possessed in the lump, any thing remains unassigned to private persons, it ought not therefore to be accounted vacant, for it still belongs to him who first took possession of that country, whether king or people, such as rivers, lakes, ponds, forest, and uncultivated mountains."⁹ Portions of territory not really occu-

⁶ See p. 18.

⁷ The second patent was given to the South Virginia Company on the 23d of May, 1609.

⁸ The Bay of the South River, (or Delaware,) was the first place of which the Men of the Half Moon took possession, before any christian had been there — *Vander Donck*.

⁹ *Grotius*.

pied, will thus be subject to the right of ownership as well as the particular parts that are actually possessed; the same right will exist throughout the whole extent.¹⁰ In the instance under notice the right of possession extended over the whole of the country that had been entered upon in pursuance of grants from the English sovereign, and was equally good throughout these limits; it was equally good on the Delaware as on the James River.

No formal claim to the country that had been examined by Hudson, was preferred at the time, either by the Dutch East India Company, or by the Government of Holland. But it was not long before the country was again visited. At this time the people of the Low Countries had but just emerged from a struggle in which they had waged a successful war with one of the oldest kingdoms of Europe. They were left with their liberty, but with little beside. Their necessities as well as their maritime situation disposed them to commercial pursuits. No opportunity was to be neglected for extending the trade of the country, and the enterprize of Hudson was supposed to have opened a field which they were ready and eager to enter.

The furs which had hitherto been procured from remoter countries, and which formed a coveted article of trade, had been found in the new lands, and might be cheaply obtained from the simple natives.

The very next year after the voyage of Hudson, a vessel was sent out by some merchants of Amsterdam freighted with a variety of goods, in order that a traffic might be opened with the native tribes.

The success of this adventure was such as to give encouragement to further attempts, and in the following year application was made to the States General, and licenses were granted to two ships, which afterwards proceeded to the Bay of New York.¹¹

¹⁰ But under a claim from possession a vague demand may not be made extending over territory not defined by ascertained limits. In the absence of a positive grant from a superior, it will be confined within such bounds as the actual knowledge and efforts of the possessors themselves have enabled them to lay down within these limits, it will be good in so far as it is good at all.

¹¹ O'Callaghan, *New Netherland*, p. 68.

The prospect of advantage that was opened led to the adoption of measures to secure the trade of the country. Petitions were presented to the States General praying that exclusive privileges might be secured to the discoverers and explorers of new lands. Accordingly, on the 27th of March, 1614, an edict was issued by "The States General of the United Netherlands," by which all and every of the inhabitants of the United Netherlands who should discover any courses, havens, countries, or places, should have the exclusive right to frequent there, for four voyages; all other persons being prohibited on pain of confiscation of ships and goods, and a fine of fifty thousand Netherland ducats.

Under the protection promised by this ordinance, a number of merchants fitted out and despatched five ships, which were under the direction of Adriaen Block, Hendrick Corstiaensen, and Cornelis Jacobsen Mey.

In the course of their voyage, these navigators examined a portion of the American coast with a good degree of exactness and care. Block and Corstiaensen explored the whole extent from Massachusetts Bay to the Hudson River. Mey extended his researches to the south, he examined the shores of Long Island, and afterwards reached the Delaware Bay, to one of the capes of which his own name has been given, and which it continues to bear.

Block and Mey appear to have returned directly to Holland to render an account of their discoveries, and to aid in securing in a proper manner, the advantages of exclusive trade. The company by whom they had been employed, caused a full report of the voyages, with a map of the countries that had been explored, to be laid before the States General, with an application for the privileges allowed in the late edict of the State, to all discoverers. Accordingly, on the 11th of October, 1614, a special grant was made in favor of the company.¹² They were to have the exclusive right to visit and navigate the described lands "situate in America between New France and Virginia, the sea coasts of

¹²The persons belonging to this company were particularly named. See O'Calaghan, p. 74.

which lie between the fortieth and the forty-fifth degrees of latitude, and which are now named **NEW NETHERLAND.**"¹³ But the privilege thus given was limited to four voyages, to be performed within the space of three years. The company to whom this grant was made assumed the name of "The United New Netherland Company."

Commander Corstiaensen, who with his people, had remained in the country,¹⁴ proceeded to make the arrangements that were required, in order that the advantages expected from the present attempt might be fully secured. A place was to be chosen for a settlement. Advancing up the Hudson, they arrived at an island which they supposed to be advantageously situated for their purpose, being so far up the stream as to bring them a sufficient distance within the country, and yet was not difficult of access from without. Here their first essay was made; a rude fortification was erected, to which they gave the name of Fort Orange; it was encircled with a moat and defended by several pieces of cannon. But the entire company did not long remain at this place, it is possible indeed, that the whole number may never have gone there. Previous adventurers had erected some slight defences near the mouth of the stream on the Island of Manhattan, and this circumstance, together with the manifest advantages of the position, invited to farther improvements. Here a fort was erected, and this place became the principal point of business and intercourse. The work here erected was called Fort Amsterdam.

¹³ The limits as here given are not correct, probably the points of latitude had not been fully determined, or the precise extent to be secured, or that was afterwards claimed, had not been fully examined. It is elsewhere said that this country, the New Netherlands, begins north of the Equinoctial line thirty-eight degrees fifty-three minutes, and extends north-easterly along the sea coast to the latitude of forty-two degrees. We may safely say that we do not know how deep or how far we extend inward.—*Van der Donck*.

¹⁴ The statements here given as to the return of Block and Mey and the stay of their associate, is founded entirely upon a comparison of the several circumstances attending the enterprise. No distinct authority can be referred to. Corstiaensen was in the country at a period which almost forbids the supposition that he had returned to Holland, and again come back. During this period, no mention is made of either Block or Mey and the presence of the former and the absence of the two latter are hence inferred.

In the following year, as it is stated, a small redoubt was thrown up on the opposite bank of the Hudson, within the limits of the present State of New Jersey.¹⁵

The immediate object in view in the undertaking directed by Corstiaensen, was the prosecution of traffic with the native tribes: the settlement was strictly a trading establishment.

Yet even this could not be properly conducted without order and government. The principal direction of affairs at first, fell into the hands of Corstiaensen himself, he being installed as Upper Hoofdt or Chief Commander. Next in dignity was Jacques Elekens, who performed the duties of Principal Commissary, and also acted as occasion required, as Deputy Commandant.¹⁶

The New Netherland Company continued to forward ships to the Island of Manhattan, and the settlement at that place gradually increased in extent and in strength: dwellings were erected around the fort, and the entire settlement received the name of New Amsterdam.

The officers to whom the management of the colony was entrusted, worthily performed the duties of their trust. They directed the manifold details of business, and preserved the settlement in peace. Their wisdom was especially manifested in the measures they adopted toward the neighboring Indian tribes. They concluded a treaty of alliance and peace with the great Five Nation Confederacy, and by this step, a danger the most to be dreaded by the colonists, was warded off, and at the same time, the necessary facilities for the prosecution of trade were preserved and secured. The treaty with the natives was concluded on the most formal manner, and it is supposed that the Delaware or Lenape tribes were also present and assumed a peculiar character, at this solemnization.¹⁷

After a period, some attempts appear to have been made toward a farther extension of the colony: it is asserted that between the years 1617 and 1620, settlements were made at Bergen, in New Jersey, in the neighborhood of the Esopus Indians, and also at Schenectady.¹⁸ These early advantages and advances seemed to open the way to future success.

¹⁵ Gordon, p. 6

¹⁶ Moulton

¹⁷ Gordon, p. 7

¹⁸ Gordon, p. 7.

But there were other circumstances of a different, and some of a threatening character; the course of the colonists was not to be one of steady prosperity. There was that in the nature of their claim to the country which rendered them liable to danger or difficulty, and difficulty from this source, was quickly experienced.

Scarcely had the Dutch become seated at Manhattan, before they were visited by a company of English. This body was under the direction of Captain Argal, of Virginia; he had been on a voyage to the north, and in his progress, had attacked and dispersed a company of French, who had settled at Port Royal, in Acadia. Argal was probably prepared for a similar attempt upon the Dutch, had any resistance been offered. He told the "pretended Dutch Governor," that he had a commission to expel him and all "alien intruders" on his majesty's dominion and territories. Corstiaensen was forced to submit himself and his plantation to the King of England, and to the Governor of Virginia, for, and under him. He also agreed to the payment of an annual tribute as an acknowledgement of the English title, but this agreement, as will hereafter be seen, was not adhered to by the Dutch.¹⁹ Opposition to the claims of the Dutch was also manifested on other occasions, though not in a manner so decisive as that exhibited in the movements of Argal.

At this time the Northern Virginia or Plymouth Company appeared, to revive *their* claim. To this company the greater part of the country embraced in New Netherland had belonged, before

¹⁹ Plantagenet's New Albion. Heylin's Cosmography, O'Callaghan's New Netherland.

Scarcely any event in our early history has given rise to more discussion than the visit of Captain Argal to the Dutch settlement. The occurrence itself has been questioned by some, on the ground that nothing appears concerning it in the records of the Virginia colony, whilst the attack upon the French is repeatedly mentioned. But this negative circumstance cannot be admitted as of any weight when opposed by positive evidence. The time of the visit has also been variously stated, and highly respectable authorities place it so early as 1613. It is certain that from 1610 to 1619, the coast was frequently visited by Dutch navigators, and there is reason to suppose that the principal trading station was on the Island of Manhattan. But there is nothing to show that there was any thing like a permanent establishment, and still less that there was any officer who could with any propriety, be called a "Dutch Governor," prior to 1614, when Corstiaensen established himself, and erected Fort Amsterdam.

the coming of the Dutch, and this claim had never been relinquished. The Plymouth Company had been less successful than its Southern rival; different attempts had been made to establish settlements in the country granted in their charter, but all had finally failed. But at this time an entirely new patent was granted by the king.²⁰ It was given to the Duke of Lennox, Sir Ferdinando Gorges, and others, forming an association under the name of "The Council established at Plymouth, in the county of Devon, for the planting, ordering, and governing of New England, in America." To this company was given "all that circuit, continent, precincts, and limits in America from the fortieth to the forty-eighth degree of northerly latitude." This grant was made without the least regard to the presence of the Dutch, although it included the whole of their settlements, and nearly the whole of the country they claimed.

Almost at the very time of the execution of the grant above mentioned, a company of persons took possession of a portion of country embraced therein. This was a body of English Puritans. Persecuted in their own country on account of their religious belief, they had fled to Holland, where a greater degree of liberty was allowed. But there they were not content, and their minds at length were turned toward a new land, where they supposed they might escape from the corruptions of the ancient world, and be at liberty to enjoy, and also to propagate, the faith they professed. A proposal was made by the Dutch among whom they resided, that they should settle in the province of New Netherland, but this offer was declined by the English unless it could be taken with a condition, reserving the rights of their own nation, to the lands they should occupy. At length they procured a patent from the South Virginia or London Company. Their voyage to America was one of peril, and they had finally been compelled to land upon part of the coast far distant from their point of destination, and where the patent they held would be useless and void. But they resolved to remain, and on the 20th of December, 1620, they began to erect dwellings at a

²⁰ Dated in November, 1620.

place they called Plymouth. Fortunately for these settlers, their friends soon afterwards procured for them a second charter by which they were allowed to possess and enjoy a portion of territory connected with their settlement, under the authority of the great New England Company.

The observer will perceive that in these movements the territory of New Netherland had not only been conveyed by a grant from the English sovereign, but that a company of Englishmen had actually entered within its limits, and taken possession.

The New Netherland Company were also informed, as is stated in a memorial they presented to the government, that His Britannic Majesty was inclined to people the aforesaid lands with Englishmen; to destroy the petitioner's possessions and discoveries, and to deprive the State of its right to these lands.²¹

Nor was this questioning of title the only circumstance that occurred, unfavorable to the advancement of New Netherland. The charter of exclusive privileges that had been granted to the New Netherland Company, had expired by its own limitation, and the government refused to grant a renewal. Special licenses were given to applicants from year to year, and an intercourse with the colony was thus kept up; but without the prospect of permanent benefit there was little to induce to farther improvement.

The benefits of trade were opened to a larger number, but the colony began to languish for want of special and steady support.

The danger and loss which might be apprehended from the several causes that have just been mentioned, may have hastened a project which at this time was mediated in Holland for forming a new and more extended company. At this period the general interests of the country were in jeopardy. The twelve years truce which had been concluded with Spain was near its termination, and hostilities might be expected to ensue. Trade was embarrassed too, from the multitude of pirates; they swarmed on every sea, and were so vigilant and active that it was by no means easy to escape their grasp. Hence, a concentration of mercantile

²¹ O'Callaghan, p. 84. It is stated that Argall, with a number of planters, were preparing to settle on the Hudson at this time — *Mason's Letter*.

energy and wealth was proposed, as a means of aiding the country and defending commerce, and also of extending colonial interests.

The plan being finally matured, a charter was granted by their High Mightinesses, the States General, on the third of June, 1621; the new body taking the name and title of "The West India Company." This association may properly be considered as a national body, the objects contemplated in its formation not being such as related exclusively to any local or corporate interest; to contribute aid and support to the republic was an important, if not a principal part of the design. Hence, beside the grant of an ample charter, the States General became bound to the support of the company, engaging to maintain and strengthen it "with all our help, favor and assistance, as far as the present state and condition of this country will admit." The States also became parties by direct participation, entering the company as members, and in like manner as other members, advancing a portion of funds, and sharing in the profit and loss.

The charter of the company provided, that for a period of twenty-four years, no natives or inhabitants of these countries, unless *in the name or by permission of this United Company of these United Netherlands* should sail or traffic to, or on the coast and countries of Africa, from the Tropic of Cancer to the Cape of Good Hope; nor in the countries of America, or the West Indies, beginning at the south end of Terra Nova by the Streights of Magellan la Maire, or any other streights or passages thereabouts, to the streights of Anian, as well on the North Sea as the South Sea, nor on any islands situate on the one side or the other, or between both; nor in the western or southern countries between both the meridians, from the Cape of Good Hope, in the east, to the end of New Guinea, in the west inclusive; and whoever should presume to sail or traffic in any of these places, within the aforesaid limits granted to this company, should forfeit the ships and goods there found for sale, which being actually seized by the company, should be kept for their own benefit.

The company were authorized in their operations in distant countries, to enter into contracts and alliances with the princes and natives of the land, and they were obligated to advance the

settlement of their possessions, encourage population, and do every thing that might promote the interest of those fertile countries and the increase of trade. They were also empowered for the purpose of protecting their trade and possessions, to erect and garrison forts and fortifications. They might distribute justice, preserve order, maintain police, and administer the general, civil, and military government of their transmarine affairs. They might appoint a governor in chief, or director general, commanders, and all officers, civil, military, judicial, and executive, who should take an oath of allegiance to the States, as well as to the company. But having chosen a Governor in Chief, and prepared his instructions, he was to be commissioned, and his instructions approved by the States.

The company were empowered to negotiate in peace, or war, though in case of war, the approval of the States must be given. When engaged in actual hostilities, the States were to give assistance with sixteen ships of war, and four yachts, to be supported at the expense of the company, and to be commanded by an officer appointed by the joint consent of the company and the States. But the company were required to furnish unconditionally sixteen ships, and fourteen yachts, which were designed "for the defence of trade and all exploits of war." The States General contributed one million of guilders to the funds.²²

The government of the West India Company itself, was vested in a number of Directors, who were distributed into several separate Chambers or Departments: the Chamber of Amsterdam being the principal one. Each one of these held under its control a certain proportion of the stock or funds, and operated within a particular sphere. A central body consisting of nineteen members was intrusted with the superintendence of all the general interests and movements of the company.

Considered as a means of strengthening the government, and of protecting and advancing commerce, the charter of the West India Company may have been properly devised. But nothing could be more defective as an instrument for the promotion of colonial

²² Hazard's Collections—Moulton's New York.

interests. It gave no security whatever to settlers. The whole authority of government was entrusted to the company without any restrictions; and the government of mercantile companies is seldom either liberal in character, or liberally administered. Such companies are apt to consider political authority, merely as an instrument of securing pecuniary benefit, and no greater concessions will be made to the governed, than may seem to be entirely consistent with the principal object in view.

The West India Association did not immediately commence operations under their charter, but during the interval, increasing activity began to be manifested, and a report was spread that preparations were making for sending a number of vessels to New Netherland. These circumstances excited the jealousy of the New England Company anew. In December, 1621, the Earl of Arundel, Sir Ferdinando Gorges, and others of that body, prepared a remonstrance which they presented to the King, (James I.) complaining of the proceedings of the Dutch. In consequence, his majesty ordered, that Sir Dudley Carleton, his Ambassador in Holland, should be instructed to make a proper representation to the States General, upon the subject. The Privy Council gave him instructions accordingly. They stated that his majesty's royal predecessors had, many years since, taken possession of the whole precinct, and inhabited some parts of the North of Virginia, now called New England, all of which countries his present majesty had in like manner granted unto particular persons; nevertheless, that the Hollanders had entered upon some parts thereof, and left a colony, and had given new names to several ports and places, and that they were now in readiness to send several ships there; whereof his majesty being advised, he had given his royal command that the Ambassador should represent those things unto the States General in his majesty's name, *he jure prime occupationis*, having a good and sufficient title to those parts, and that those ships should not be allowed to proceed, or any further attempts be made for the settlement of colonies.

In obedience to orders, the Ambassador demanded an audience of the States General, and presented a memorial upon the subject. The Dutch Government professed not to be in possession of the

facts of the case, and upon being again applied to, a direction was given, that application should be made for information to those who were concerned in the trade to New Netherland.²³

Finally, as it is stated by most authorities, the Dutch Ambassador in England, disavowed on the part of his government, all concern in the acts that had been complained of.²⁴

²³ O'Callaghan, p. 97.

²⁴ See Captain Mason's letter relative to the Dutch in New Netherland, dated April 2d, 1632.

CHAPTER IV.

NEW NETHERLAND.

ONE of the first attempts of the West India Company, was designed to give aid and support to the settlement in New Netherland. The territory was formally erected into a province to be known and distinguished by certain armorial insignia.¹ The management of its affairs was assigned to the Chamber of Amsterdam, this department having the direction of four-ninth parts of the whole stock of the company.² In the year 1623 an expedition was sent out under the direction of Cornelis Jacobson Mey, and Adriaen Jorisz; they were accompanied by a number of settlers, and were provided with articles for trade with the natives. Mey, the principal in command, had visited the country before; he now touched at the post upon the Island of Manhattan, but soon afterwards proceeded onward to the South, or Delaware River, where he designed to establish a settlement. He ascended the stream for several leagues, and selected a spot on the eastern bank, at a place called Tetchaacho, by the natives. It was near the mouth of the Sassackon, the most northerly branch of a stream, which afterwards came to be known by the names of Gloucester River, and Timber Creek.³ A work was erected here, which received the name of Fort Nassau, and the erection of this fort was the primary effort of civilized man upon the shores of the Delaware, with any view to actual occupation.⁴

¹ O'Callaghan, p. 69.

² Agreement between the managers and principal adventurers of the West India Company.

³ Mickle's Reminiscences, p. 3.

⁴ About the year 1616, Capt. Hendrickson had sailed up the Delaware as far as to the mouth of the Schuylkill, but no attempt was made to effect a settlement by him or by any others, prior to the present visit of Mey.

The prosecution of trade with the natives was the immediate aim of the present undertaking, and for this purpose a body of men remained at the post; but history is almost silent as to their further proceedings, and also as to the subsequent movements of the Commander, Mey. In a sort of legendary way, the information is conveyed, that he succeeded in opening an intercourse with the native tribes, and that the communication between them was such, as to give rise to feelings of confidence and kindness.

Either under the direction of Mey, or of the officers in the province at the time of his coming, another station was erected, nearly at this period, on the North, or Hudson River.

In 1624, the Amsterdam Department sent out two ships to the colony, amply provided with stores. A Governor, or Director in Chief, was also appointed. The person selected for this office was Peter Minuet, a native of Wesel, in the kingdom of Westphalia; and in one of the ships just mentioned, he arrived in the province. It would appear that the authority of Corstiaensen, the first commandant in the country, had ceased with the dissolution of the company under which he had acted, but Elckens, his lieutenant, had continued in office under the direction of the West India Company; this latter officer however, was superseded upon the appointment and arrival of the new Director. The coming of the Governor, and the accession to the number of settlers which then occurred, gave an appearance of stability and strength to the settlement.⁵

In the government of the province, the general course of affairs was carried on in accordance with instructions given to the officers by the Amsterdam Department. The Governor, with the other officers, forming a council, constituted the executive and legislative

* There arrived with Director Minuet, a number of persons known by the name of Walloons. They were natives of the country which formed the frontier between Belgium and France, and had formerly applied to Sir Dudley Carleton, the English Ambassador at the Hague, for leave to settle in Virginia. The application was referred to the Virginia Company, but the conditions that were offered by this company not being approved, the attention of the applicants was turned to New Netherland. Of those who came with Director Minuet, a number settled on Staten Island, but afterwards removed to Long Island, and to a place called the Wahle-Borch, since corrupted into Wallabout. O'Callaghan, p. 101.

authority, and were also the sole judicial tribunal. The duties of the Governor were somewhat varied in character, he having the chief control in all military, as well as civil and criminal affairs, and also a general superintendence in matters of trade. But his military duties could hardly have been onerous; the garrison at the different forts consisted of scarcely more than a sergeant and his guard, and even these had but little exercise in their proper vocation. The colony was secured from danger by the alliance which had formerly been concluded with the native tribes, and which yet continued to be faithfully observed. Nor was the business of a civil nature of much extent. There was no extensive range of aims or employments, and of consequence, but few occasions occurred requiring an exercise of formal authority. The action of government was nearly limited to a single object, the prosecution and management of trade.

The other officers of the province were those who had the immediate direction of mercantile affairs. The first of these, next to the Governor, was the *Opper Koopman* or *Upper Merchant*.⁶ He performed the duties of principal Commissary, and also of Book-Keeper or Clerk, and the first individual invested with these offices was *Isaac de Rasier*, a person who is represented as having been active and faithful in office, and who was also commended for his "fair and genteel behaviour."⁷

The administration of Governor Minuet was highly successful, at least for a time. A title for lands was acquired from the natives, by treaty or purchase. The Island of Manhattan, which before had been held through favor, was obtained by purchase for the sum of sixty guilders.* The works at this place were extended, the fort was greatly enlarged, and its former name was confirmed. Here was the capital of New Netherland.

The trade of the province was also prosperous. The articles exported from the colony, even in the first year, exceeded in value the amount of the imports, and in four years the trade had increased one-half, and the revenue derived from the country was greater than the expenditure, fully one-third.

* Moulton's New York.

† Bradford's Correspondence.

‡ Twenty-four dollars.

Only a single occurrence of an adverse or disturbing character took place at this period. Upon the passage of some ships to the colony, one of them touched at Plymouth, in England, and was there detained. Her captain was ordered to London to appear before the Lords of the Privy Council, inasmuch as the place in America for which he was bound, was claimed to be comprehended in the grant made by his Britannic Majesty to divers of his subjects.

This arrest was of far less consequence from its immediate effects, than from the disposition it manifested on the part of the English, to maintain their claims to the country of New Netherland. But no farther demonstration was made at the time.

At an early period, a new channel of trade was opened by Director Minuet, by the establishment of an intercourse with the English colony at Plymouth. These settlers were the same that have already been mentioned as having passed over from Holland, and became established at Plymouth, under a charter which had been finally obtained from the great New England Company.

The English and the Dutch had remained in the country with scarcely more knowledge of each other than they had been able to acquire from the natives, who were in intercourse with both. A more direct communication was now attempted by the people of New Netherland. Letters were sent to the Governor of New Plymouth, written by Isaac de Rasier, from Manhattas, in Fort Amsterdam.* The writer, on behalf of the authorities of the province, congratulated the English colonists on account of their settlement in the country, and their prosperous condition, made a proposal for the maintainance of friendly intercourse, and an offer to engage to trade.

To this overture the English soon afterwards returned a lengthy reply. It was made in the name of "the Governor and Council of Plymouth, in New England," and was expressed in terms sufficiently courteous. They professed a desire to live in amity, and a willingness to engage in traffic, but they took occasion to intimate, and that with some plainness, that they did not

* Dated March 12th, 1627, N. S.

consider the claim of their neighbors to the country of New Netherland, to be entirely valid and sound.¹⁰ They also required that the Dutch should refrain from trading with the natives,

¹⁰ The answer of Governor Bradford and his Council. Dated March 19th, 1627.
 "To the Honorable and Worshipful, the Director and Council of New Netherland, our very loving friends and neighbours.

"The Governor and Council of Plymouth, in New England, wish your Honours and Worships all happiness and prosperity in this life, and eternal rest and glory with Christ Jesus our Lord, in the world to come.

"We have received your letters, wherein appeareth your good will and friendship towards us, but is expressed with over high titles, and more than belongs to us, or than is meet for us to receive; but for your good will and congratulation of our prosperity in this small beginning of our poor colony, we are much bound unto you, and with many thanks do acknowledge the same, taking it both for a great honor done unto us, and for a certain testimony of your love and good neighbourhood. Now these are further to give your Honours, Worships and Wisdoms to understand, that it is to us no small joy to hear that it hath pleased God to move his majesty's heart, not only to confirm that ancient amity, alliance, and friendship, and other contracts formerly made and ratified by his predecessors of famous memory, but hath himself (as you say) and we likewise have been informed, strengthened the same with a new union, the better to resist the pride of that common enemy, the Spaniards, from whose cruelty the Lord keep us both, and our native countries. Now for us, this is sufficient to unite us together in love and good neighbourhood in all our dealings, yet many of us are tied by the good and courteous entreaty which we have found in your country, having lived there many years, with freedom and good content, as many of our friends do to this day, for which we are bound to be thankful, and our children after us, and shall never forget the same, but shall heartily desire your good and prosperity as our own, forever. Likewise, for your friendly proposition and offer to accommodate and help us with any commodities or merchandize which you have, and we want, either for beaver, otter, or other wares, it is very acceptable to us, and we do not doubt but in a short time, we may have profitable trade and commerce together. But you will please to understand that we are but one particular colony or plantation in this land, there being divers others besides unto whom it hath pleased those Honorable Lords of his Majesty's Council for New England, to grant the like commission and ample privileges to them (as to us) for their better profit and subsistence, namely, *to explore, or make prize of any, either strangers or other English, which shall attempt either to trade or plant within three limits (without their special license and commission) which extends to forty degrees.* Yet for our parts we shall not go about to molest or trouble you in any thing, but continue all good neighbourhood and correspondence as far as we may; only we desire that you would forbear to trade with the natives in this Bay and River of Naragansett, and Sowames, which is, as it were, at our doors. The which if you do [if you do this forbear] we think, also, no other English will go about any way to trouble or hinder you *which otherwise are resolved to solicit his majesty for redress, if otherwise they cannot help themselves.*"

within certain specified bounds. The Dutch made a firm though moderate reply; they insisted upon their rights to the country, and to perfect freedom of trade therein, and declared that they would maintain their claim. *

Some time afterwards, De Rasier, the principal Merchant and Clerk, was sent from the New Netherlands to the English settlement, for the purpose of securing a better understanding, and concluding a more perfect agreement. He was honorably received and entertained at Plymouth, and a letter was written acknowledging his visit, and expressing satisfaction with his course and demeanour. This letter was similar in its general tenor to the former communication sent by the English; they repeated the same friendly expressions, but also adverted again to the subject of title. "We desire," they say to the Dutch, "that ye would take into your wise and honorable considerations that which we conceive may be a means of much future evil, if not prevented, namely, that you clear the title of your planting in these parts, which his majesty hath by patent granted to divers of his nobles and subjects of quality; lest it be a bone of division in these stirring evil times, which God forbid. We persuade ourselves that now may be easily and seasonably done, which will be harder and with more difficulty obtained hereafter, and perhaps not without blows."

This correspondence exhibits fully the relative position and claims of the English and the Dutch; both insisted upon a right to the same portion of country, and to freedom of trade therein. Such a condition of things distinctly foreshowed a collision in future, though for the present, peace was preserved. By a sort of tacit agreement, the discussion of the respective rights of the parties, was dropped for the time, they deeming the determination of the matter in question, to be of less importance to their present prosperity, than the maintenance of peace, and harmonious intercourse.

It was a part of the business of the West India Company to advance the settlement and population of the countries which they should come to possess. But nothing of consequence had yet been done in New Netherland for the attainment of such a purpose. The spirit of trade and commerce had directed the operations of the company, and little had been attempted that did not promise to give

a return in actual profit. No efforts had been made for the purpose of extending the sphere of enjoyment or action. Lands had not been granted to settlers, or any encouragement given to individual effort. Most of the colonists were engaged in the service, and were under the entire control of the company. The country was still a wilderness.

These considerations had been brought at different times to the notice and attention of the company, and it was finally resolved that measures should be adopted for the planting of colonies. In pursuance of this purpose, a system of operations was projected embracing provisions for peopling and planting the lands within the New Netherlands, and securing the liberties and privileges of settlers.

The Assembly of Nineteen granted an instrument prescribing and explaining the particular course of proceeding. This instrument was termed "A Charter of Liberties and Exemptions for Patroons, Masters, and private individuals, who should plant colonies in New Netherlands, or import thither any neat cattle."¹¹ It provided that members of the company inclined to settle any colony, might send out persons in the ships of the company, to inspect the state of the province, and to select lands or settlements upon compliance with certain prescribed conditions and terms. Members first applying were to be preferred. All persons were to be acknowledged Patroons of New Netherland, who should, within four years after giving notice to any of the Chambers, or to the Governor and Council in the province, undertake to settle a colony of fifty souls, upwards of fifteen years old. From the time any persons should make known the situation of places chosen, they should be allowed a title, in preference to all others, but afterwards might make a different selection, by consent of the Governor and Council.

The Patroons might take up for each settlement, an extent of four miles (sixteen English miles) along a shore, or half that distance on each side of a river, and extending inland as far as they might need, and they might enlarge their limits upon engaging to settle a proportionate number of colonists.

¹¹ Given on the 7th of June, in the year 1629.

They should forever possess and enjoy all the lands within their limits, which were to be holden from the company as an "eternal inheritance."

They were to furnish the persons sent over to settle, with suitable instructions, in order that they might be ruled and governed conformably to the rules of government established in the province.

The colonists were to be free from customs, taxes, excise imposts, or other contributions, for the space of ten years, and then no higher custom to be charged by the company than was paid at home.

The company engaged not to take or receive from the service of the Patroons, any of the colonists; "either man or woman, son or daughter, man servant or maid servant;" unless on consent obtained; but on the contrary, every thing should be done to apprehend and deliver fugitives into the hands of their Patroon, or his agent.

Private individuals (not enjoying the same privileges as the Patroons) who should be minded to go and settle, should with the approbation of the Director and Council, of the province, be at liberty to take up as much land, and take possession thereof, as they should have ability properly to improve.

The colonists might navigate and trade along the whole coast, from Florida to Newfoundland, provided they brought their merchandize to the Mannhattans, and paid a duty of five per cent. to the company.

The company engaged to take all the colonists, as well free as those that were in service, under their protection, and to defend them against all "outlandish and inlandish wars and powers."

The Patroons and colonists were required, in particular, and in the speediest manner, to endeavour to find out ways and means whereby they might support a minister and schoolmaster, that thus the service of God and zeal for religion might not grow cool and be neglected among them, and they were also required, "for the first to procure a comforter of the sick there."

The colonists were forbidden to make any woollen, linen, or cotton cloth, or to weave any other stuffs there, on pain of being banished, and as perjururs, to be arbitrarily punished.

The company engaged to use their endeavours to supply the colonists with as many blacks as they conveniently could, on conditions to be afterwards made.

This charter formed the principal basis upon which the civil institutions of New Netherland came to be placed. It exhibits a singular mixture of principles and views: some of its provisions were liberal, whilst others were extremely rigid. Neither the interests of the company or those of the settlers were fully secured. The concessions that were made by the company fell short of their object, turning in a great degree to the special benefit of certain individuals. The principal directors of the plan were ready to seize for themselves the advantages offered: in the character of Patroons, they secured acquisitions in the province which almost gave them a monopoly in land, and thus they were able to retain, in their own hands, some of the most important privileges yielded in the charter. To the mass of actual settlers nothing whatever was given. The charter contemplated or allowed, the establishment of a kind of feudal or manorial rule, by which the colonists would be held in a state of complete dependence. No provision was made for the division of lands, either present or prospective. The people to be sent by the Patroons, were regarded, and were to be controlled by the owners of the soil, as a servile class. They were to become American serfs. No plan could have been devised, less calculated either to benefit adventurers, or to promote the interests of the province, and by this mistaken policy, the foundation was laid for social and civil distinctions, which have not been fully effaced to the present hour, and which have always continued to act as a cause of irritation, and a bar to general improvement.

By a wiser provision, the charter gave liberty to private adventurers, to make a selection of lands, and to enjoy the same by personal right. Yet these individuals were subjected to many disadvantages when acting by the side of the great proprietors, who, from their special privileges, were enabled to exert a controlling influence.

By the strict prohibition of manufacturing employments, the settlers under the charter were reduced to actual subjection. Articles of indispensable necessity must be taken from the com-

pany, or if elsewhere procured, must be brought in a certain channel, and duty be paid upon them "for recognition," to the company.

The engagement to supply the colonists with "blacks," may have proceeded from a willingness to benefit the settlers, or from a desire to engage in a profitable trade. But whatever may have been the motive, no other effect could be produced, than to place an element of evil at the very basis of the social structure.

The full protection given to settlers, the exemption from taxes, and the regulations in relation to literary and religious instruction, were provisions liberal in spirit, and proper in their ultimate object.

The Chamber of Amsterdam having had the control of affairs in New Netherland, the directors of that body became the earliest actors under the Charter of Liberties and Exemptions. This charter had not yet received the sanction of the Assembly of Nineteen, or of the States General, when these persons entered upon measures to secure a share of the proposed advantages. In the ships that were sent to the province, were persons having authority to treat with the natives for land, and upon their arrival in the country, these agents visited an Indian village on the southwest corner of Delaware Bay, and purchased a tract of land from three resident chiefs of that vicinity. This tract extended from Cape Hindlopen, thirty-two miles in length, and was two miles in breadth; it was taken in the name and on behalf of Samuel Godyn, and Samuel Bloemmaert.¹² The next year another tract was purchased for the same individuals, on the opposite side of the Bay, at Cape Mey; this purchase was made from nine resident chiefs, and was sixteen miles in length and the same in breadth, making a square of sixty-four miles.¹³ Other portions of lands were acquired in different parts of the province in a similar man-

¹²This purchase was made some days before the final ratification of the charter of Liberties and Exemptions.

¹³This tract was purchased by Peter Heyser, Skipper of the ship *Whale*, and Giles Coster, Commissary. It was probably the first purchase from the natives within the limits of New Jersey, at least, it is the first upon record. It was made on the 5th of May, 1630.

ner. Staten Island was taken up for the Director Pauuw, and a large extent in the vicinity of Fort Orange, was acquired for De Heer Kiliaen Renselaer. The territory of Godyn and Bloemmaert, on the western side of Delaware Bay, was called Zwanendal, that of Pauuw, Pavonia, and Renselaer named his Rensselaerwyck. In most of these instances, the tracts exceeded in extent the limits allowed in the charter, yet they were afterwards confirmed to the purchasers, by the Governor and Council of the province. The clause providing for an extension of limits in certain cases, may have been resorted to, and have been considered sufficient to warrant the confirmation.

A course of proceeding was soon devised for the purpose of establishing colonies upon the lands that had thus been obtained. The first attempt was made by a company of several of the large proprietors, who were willing, by such an union, to concentrate their means, and to promote the interests that were common to all. On the 16th of October, 1630, they entered into an agreement, in a formal manner, in an article of association and contract. Their purpose was to establish a colony at the South or Delaware River, and they offered the direction of the enterprize to David Pieterszen De Vries, an experienced commander. He was willing to engage therein upon certain conditions, which were acceded to, and an expedition was at once fitted out.¹⁴ De Vries departed from the Texel on the 12th of December, 1630, and arrived safely at the place of destination. A company of emigrants, thirty-four in number, were landed, with their implements of husbandry, on the western shore of Delaware Bay, near to the entrance of a stream called the Hoar-Kill. It was within the territory of Zwanendal, belonging to Godyn and Bloemmaert. After such arrangements had been completed as he supposed to be necessary, De Vries,

¹⁴ De Vries's account is as follows, "After my arrival from the East Indies, I met with a merchant of Amsterdam, named Samuel Godyn; he offered me a Commandership in the New Netherland. They had a mind to form a colony there, and they would employ me as Second Patroon, as was granted by the States, and by the West India Company's Charter. I answered him that I was willing to accept the offer, upon condition that I should be a Patroon, equal in every thing to the others. This was agreed to, and in consequence we have formed a Patroonship, viz: Samuel Godyn, Killian Van Renselaer, Samuel Bloemmaert, Jan De Laet, and I, David Pieterszen De Vries."

full of hope for the success of the undertaking, departed for Holland, leaving Gillis Hoossett in charge of the colony, during his absence.

Besides the association with which De Vries was connected, others resembling it in character had been formed, and they also engaged in efforts similar to those which had been made for the settlement of Zwanendal. On the 9th of January, 1631, complete lists of the several Patroonships were delivered to the West India Company, and the grants, with the proceedings that had been taken thereon, were approved by the Assembly of the Nineteen.

But, at an early period the operations of the Patroons brought them into opposition to the interests, or the claims, of the West India Company. They considered themselves entitled by the charter under which they were acting, not only to trade upon the coasts in the manner prescribed, but also to traffic with the natives of the country, at least in those places where no establishment had been formed by the company, when the charter of Liberties and Exemptions was given. This was strongly resisted by the company. It was also contended by some, that an undue advantage had been gained by the Patroons, in the great extent, or the fortunate situation, of some of their tracts. The acquisitions that had been made by Pauuw, and by Godyn and Bloemmaert, were particularly objected to. Serious difficulties ensued, and at length, the "whole of the Exemptions were questioned, and called into doubt." The matters in dispute were thought of sufficient importance to claim the notice of the Government, and the States General issued an order, that a report should be made of the names of all those persons to whom colonies had been granted; but no decisive result was produced. These differences were finally allayed by admitting a number of the members of the company, into the associations that had been formed by the Patroons; a measure which may have served for the removal of jealousy, and may also have been considered as giving a degree of security against future encroachments.¹³

¹³ The Directors received as partners with the Patroons, were Mathias Van Ceulen, Hendrick Hamel, Johan Van Harmelhouck, and Nicholas Van Settorigh.

At this period, and it may be in part, in consequence of these occurrences, a change took place in the administration of Government. Director Minuet had been in office for several years, and had managed the affairs of the colony with apparent fidelity, and with good success. But, as it is stated, he fell at this time "into disputes with the company," and the difficulty terminated in his displacement and recall. The precise nature of the charges against him, or indeed, whether any definite charges were made, are matters not fully determined, but it may be supposed that he was suspected, at least, of favoring the movements and claims of the Patroons. Isaac De Rasier shared the fortune of his superior, and after the recall of these officers, the government was administered, for a period, by the Council alone.

The return of Governor Minuet was attended by a circumstance little in favor of the interests of New Netherland. The ship in which he was returning, was compelled by stress of weather, to put into the Port of Plymouth, in England. She was immediately seized at the suit of the New England Company, on a charge advanced by Mason, one of the company, of having traded to, and obtained a cargo in countries subject to his Britannic Majesty. A petition was addressed to the Secretary of State, complaining of the Dutch, they having settled, as it was said, "as interlopers," between the plantations of Virginia and New England.

The arrest above mentioned, led to a discussion between the parties immediately concerned, and finally, between the Governments of England and Holland, in which the respective claims of the countries to the territory occupied by the Dutch, were fully set forth and examined. In the conclusion, a positive assertion was made by the English, of a title to the whole of New Netherland, to which the opposite party forbore to make a reply, but they continued to urge that their vessel and people should not be detained. This demand was at length acceded to; the Lord High Treasurer of England, ordering their release, but still, with a condition, "saving and without any prejudice to His Majesty's rights."¹⁶

¹⁶ O'Callaghan, p. 137.

In 1633, Wouter Van Twiller received the appointment of Director General of New Netherland.¹⁷ He had been a Clerk in the employ of the West India Company, and his elevation was probably owing to the influence of a relative.¹⁸ A cotemporary speaks of his coming into office "from a Clerkship," as "an amusing case."¹⁹ It would scarcely seem just to pronounce an opinion merely from his former pursuit, but there was nothing in the Governor's subsequent course to show a remarkable fitness for the duties of any exalted place.

The same number of officers continued in the Council as in the time of the former administration; Jan Van Remund occupied the place left vacant by the removal of De Rasier. Hans Jorissen Houten was Governor or Commissary of Fort Orange, and Arent Corssen of Fort Nassau. Attempts were made by the Governor for the improvement of the several settlements. Orders were issued that Fort Amsterdam should be rebuilt and strengthened, a church erected "for general worship," and a mansion raised for the Director General himself. "A large house with balustrades," with smaller dwellings for the people, were to be constructed at Fort Orange, and "one large house" at Fort Nassau, on the South River. The establishment at the latter place had not been prosperous, the garrison had been greatly reduced, and perhaps at times entirely dispersed; yet the post had never been finally abandoned, and the Director resolved that it should now be strengthened anew. The other settlement on the Delaware, that which had been established in Zwanendael, was not in the charge of the West India Company, but was under the Patroons. At this time, it had been wholly destroyed by the Indians; upon the return of De Vries, its founder, all was totally lost, he found nothing left of the settlement except the remains of his murdered companions.

Director Van Twiller entered upon office at a time not favorable

¹⁷ It is asserted by many writers, that Van Twiller had been in the country before, in an official capacity, and that the removal of Minuet was owing to statements made by Van Twiller, upon his return to Holland. But no one circumstance has been referred to, giving evidence of the agency of this person, either in the case of Minuet or in any occurrence in the province, prior to the time of his present appointment.

¹⁸ The Patroon Van Rensselaer.

¹⁹ De Vries.

for the enjoyment of ease and tranquility. At an early period after his arrival, the relations between the Dutch, and their neighbors, the English, began to assume a threatening character. New England and New Netherland were brought together on the borders of the Connecticut River. The Dutch had been the first to enter this stream, and they were now disposed to take possession of the country upon its shores; an agent was despatched to purchase the land of the natives, and he was also ordered to cause a house or fort, for the purposes of trade, to be erected thereon. This was accordingly done, and the new post was named the "House of Good Hope." But the Director was presently informed, by letters from the English Governor at Boston, that the King of Great Britain had granted the whole of this country to sundry of His Majesty's subjects, and a warning was given to the Dutch to make no establishments within the limits of the grant.

Van Twiller replied, that the demand of the English "seemed strange unto him," and he could wish "that His Majesty of England, and the Lords States General would agree concerning the "limits and parting of their quarters." He therefore desired that the "pretence or claim" to the country should be deferred until their respective Governments should determine concerning the same. But the English were not inclined to so careful a policy, and a favorable opportunity presented for an immediate assertion of the claim they had made. They were invited by some Indians to make a settlement on the Connecticut, and a company of persons from New Plymouth directly prepared to improve the occasion.²⁰ A vessel was fitted out in which they ascended the river, and passed the "House of Good Hope" in defiance of the threats and demands of the occupants, and afterwards effected a landing and erected a house. Director Van Twiller made an earnest protest against this procedure, but the English commander only replied, that he was there "by the command of the Governor and Council of New Plymouth, and that he was determined to remain in the name of the King of England, whose servant he was."

²⁰ The Indians here mentioned, were of the Pequot tribe, they had quarrelled with the Dutch at the "House of Good Hope," and in revenge, resolved upon favoring the English.

The advantage which was thus secured by the English, they were watchful to maintain, and the command of the shores of the Connecticut, was lost to the Dutch. An ineffectual attempt was also made by the English, to establish themselves upon the Delaware. A small party, under the command of Captain Holmes, proceeded to the vicinity of Fort Nassau, but they were arrested by the Dutch, and sent back as prisoners, to the authorities at Manhattan.²¹

The administration of Director Van Twiller was not successful either in regard to the outward relations of the province, or the management of its internal affairs. Disorders prevailed in the colony, and economy was not the rule of the government. Some of the officers seemed rather intent upon enriching themselves, than promoting the interests of the company; and the Director himself was not free from suspicion.²² At length complaints against his proceedings were made to the West India Company, and though he was defended by some of the members, it was finally determined that a change should be made.

In 1638 he was superseded by the appointment of a new Director.

His successor in office considered it necessary as a measure of justice to himself, to have a statement prepared, setting forth in full the condition of affairs, at the time of his arrival. The picture presented is by no means a favorable one.²³

²¹ Cf. *ibid.*, p. 150.

²² In the statement made by Kellie, the successor of Van Twiller, it is distinctly asserted that the latter had undertaken different works on account of individuals not of the company, and it is known that he had appropriated portions of lands for himself. The suspicion of want of fidelity is also strengthened by the fact, that after his retirement from office, he was active in opposition to the company, whilst serving as agent at Renselaerwyck.

²³ See this statement in *New York Historical Collections*, vol. 1, p. 374.

CHAPTER V

NEW NETHERLAND, NEW ALBION, AND NEW SWEDEN.

WILLIAM KEIFT was appointed as the successor of Van Twiller on the 28th of March, 1638.

The New Director was possessed of a good degree of activity and vigor, and the situation in which he was placed called for the exercise of his best capacities and powers. In addition to the unfavorable condition of affairs at the time of his coming to the province, he soon became embroiled with the native tribes. The harmony that had so long subsisted between the Indians and the Dutch, was suddenly broken; in the indulgence of a temper which was sometimes ardent to the verge of imprudence, the Director pursued a quarrel arising from the act of a single individual, until there arose a general war. Much property was lost, and many lives were sacrificed, in the course of a protracted contest. Besides these internal disorders, difficulties were increasing from without. The English settlers in New England were constantly advancing. Under the influence of forms of government which gave an equal measure of liberty to all, these colonists were inspired with life and activity, and in consequence were continually seeking to widen the field of action, and enterprize. In their efforts for this purpose, a scrupulous attention to form, was not always exhibited. If the limits of particular patents were thought too narrow, they urged on their own behalf the rights of the great England Company, or claimed to have a sufficient warrant as he servants of the King. The claims of the Dutch were no further regarded, than merely prudential reasons required. The very year of the arrival of Director Keift, a company had formed a settlement at a place which the Dutch called Roodeberg,

but to which the English gave the name of New Haven, and notwithstanding a strong protest from Keift against the procedure, they continued to hold possession. This circumstance gave much uneasiness to the Dutch authorities. Some time previous also, the English King had made a new grant, in which a large portion of the territory of New Netherland was included, and the holders of this grant soon afterwards appeared, to support their claims. At this time too, another people, THE SWEDES, were entering the country, and were seeking to secure possession, by purchasing lands of the natives, and erecting dwellings and forts.

Beside the possession of the lands they occupied, the New Haven settlers attempted a farther acquisition. In the following year they despatched an agent, Captain Nathaniel Turner, who proceeded to the Delaware, and purchased a tract of land for plantations, on both sides of the river. The prosecution of this purpose is to be presently noticed.

The new grant from the English King which has already been referred to, was executed prior to the period now under notice, being dated on the 21st of June, 1634. It was made in favor of Sir Edmund Ployden, Knight, and certain associates.

It may have been the design of the English King to convey at this time all the territory upon this part of the continent, not included in former conveyances, and in this manner to perfect or complete the English title to the country. The patent held by the great New England Company, gave a title as far as to the fortieth degree of latitude; below this, the country had reverted to the English Crown, in consequence of the dissolution of the South Virginia Company. But a portion of the country that had belonged to the Virginia Company, had now been re-granted, having been given in the year 1632, to George Calvert, Lord Baltimore, and this portion was erected into a separate province, called Maryland. The province of Maryland extended in a north-westerly direction, to the fortieth degree of latitude, and hence, in that direction, came into contact with New England. But toward the east, Maryland did not extend to the Atlantic coast but ran, for a part of the distance, along the course of an inland stream, and of consequence, a portion of territory was left, below the fortieth degree, and between Maryland and the Ocean, the

was still ungranted.¹ It may have been the intention of the English Sovereign (but this is only conjecture) to make a conveyance of this remainder, in the grant to Sir Edmund Ployden, and his associates.²

But whatever may have been the purposed limits of this grant, in the actual execution thereof, portions of territory were included, on the north, and on the south, that were also embraced in previous claims. The description of limits as given in the several authorities, is somewhat confused and uncertain. In the Patent itself, which is the authority most to be relied on, the situation of the Isle of Ployden, or Long Island, (which was included,) is first set forth, and the boundaries of the adjacent territory upon the continent, are then described. The outline of the latter portion is nearly as follows:

Beginning at a certain point or promontory called Cape May, and running from thence forty leagues westward, pursuing the course of the Delaware for a time and then passing into Maryland, then, from its western limit forty leagues northwardly, then, by a right line inclining toward the east, forty leagues, to the river, and afterwards descending, touching and including the top of Sandhcey, (Sandy Hook,) to the promontory of Cape May aforesaid. Though there is here a want of precision, it is still sufficiently evident that there would be included within these limits a portion of territory belonging to New England, and also a part of the province of Maryland. This encroachment upon adjoining grants is indeed distinctly acknowledged by a principal authority,³ and it is explained and defended on the ground that the older grants

¹ From 1624, when the South Virginia Company was dissolved by King James, until the grant was made to Earl Ployden, the portion of territory above mentioned, was not included in any special grant; it consisted of that part of the present State of New Jersey that lies below the fortieth degree of latitude.

² That the intent in the present case, was such as is here suggested, receives some support from the fact, that in the description of places, the Isle of Ployden or Long Island is said, (though erroneously,) to lie "near or between the thirty-ninth and fortieth degrees," a position which would nearly correspond with the actual situation of that part of the territory upon the continent, which remained ungranted.

³ Plantagenet's History of New Albion.

had been unfairly obtained, or as it is expressed, "were gotten on false suggestions." But in regard to the claims of the New Netherland settlers, it was of little importance what were the limits of the present grant; whether the English claim was every where the same, or not; whether doubled, or single, in any case, the title of the Dutch to the country was wholly denied.⁴

The grant to Sir Edmund Ployden and his company, was made in the amplest and fullest manner. The patent conferred upon him and his associates and their heirs and assigns forever, the full right to all the lands that were mentioned and described therein. It constituted the said Sir Edmund Ployden and his associates absolute lords and proprietors of the same. It also provided "in order that the said region might outshine all the other regions of the earth, and be adorned with more ample titles, that the said region should be incorporated into a province to be nominated and called New Albion, or the province of New Albion, to be and remain a free County Palatine, in no wise subject to any other." Sir Edmund was constituted County Palatine, with the title of Earl Palatine of Albion, or of the Province of New Albion in America.

The Earl Palatine was empowered to make whatsoever laws might seem best, whether concerning the public estate of the province, or the private utility of individuals, with the counsel, approbation, and assents of the free tenants of the province or the major part of them who should be called together. But, it was further provided, that as it might often happen that there would be a necessity to provide a remedy in a number of cases before the free tenants could be assembled to make laws, the Earl Palatine and his heirs and successors, should have authority to make "fit and wholesome ordinations, as well for keeping the peace as for the better government of the people, provided however, that such ordinations should be consonant to reason, and not repugnant to the laws, statutes, and rights, of the kingdom of England and Ireland, and so that they did not extend to the right or interest of any person, or persons, of, or in free tenements, or the taking, distraining, binding, or charging, any of their goods or chattels."

⁴ Even that portion of country which for a time had remained ungranted, continued in the interval to be subject to the British Crown.

It was also provided that all persons should be allowed to travel for the purpose of inhabiting in New Albion, and to carry all goods, wares and merchandize, to be shipped and transported, without any imposition, subsidy or custom, only with a license from the King's Treasurer; so also, all goods and merchandize whatsoever, from the province might be taken to any part of the kingdom, and disposed of without the payment of any tax, subsidy, or custom whatsoever, provided however, that this immunity should only continue for the space of ten years. Furthermore, no imposition, custom, or taxation should be imposed at any time hereafter upon the tenants or inhabitants of the province or any lands, tenements, goods or chattels, or in, or upon, any goods or merchandize within the province.⁵

The Earl Palatine exerted himself to effect a settlement of his province. It is indeed said in the patent, that the said isle and region had already been "amply and copiously peopled with five hundred persons," but if such a population existed at that time the particulars of its history are entirely lost. But there is evidence that at an early period after the charter was given, an attempt was entered upon to establish a colony. An association was formed composed of Lords, Baronets, Knights, Merchants and Planters, in all, forty-four persons, and this company engaged by indenture to send out "three thousand able trained men," and settle them upon the Palatine's domain. In the year 1641, the Earl made an attempt to carry out the projected plan, and for its better success, attended the enterprize in person. He conducted a company into the province, though it would seem that but a small part of the promised number of men, were in actual attendance. Either from the

⁵ See New Albion Patent in Hazard's Collections. Penington, a late writer, in an article given in the Memoirs of the Pennsylvania Historical Society, vol. 4, has attempted to discredit this instrument, representing it as spurious, or at least as open to doubt and suspicion. But this writer exhibits, on most occasions, a singularly sceptical temper; he resolutely disputes what most other authorities readily admit. The instrument in question is vague, and sometimes incorrect, in description, and it seems to have suffered from a most faulty translation, but it contains such evidences of authenticity, and is supported by so much collateral proof, that it cannot be wholly rejected.

smallness of his force, or from some other cause, the Earl did not succeed in his endeavours to establish a settlement; but he remained in the country, and engaged in exploring his province. The whole extent was divided into several manors, and these being dignified with well chosen names, served to give titles to each member of the Earl Palatine's family.⁶

Almost at the same time with the arrival of the Earl, a company of persons entered the province, with a view to effect a permanent settlement therein. This was the body sent out by the New Haven Colony to take possession of the lands upon the Delaware that had been purchased by Captain Turner, as has heretofore been mentioned. They were instructed to act in close connexion with the mother colony; they were to plant the lands and engage in trade, and were also to establish churches in gospel order and purity.

The company consisting of near fifty families, sailed in a vessel belonging to one Lamberton, a merchant of New Haven, and Robert Cogswell was commander. They touched at Fort Amsterdam on their voyage, and the authorities at that place became thus apprized of the nature of the object they had in view. Governor Keift was too much alive to the movements of the English, to allow him to look with indifference upon the present attempt, and he at once protested against it.⁷ The English Com-

⁶ Plantagenet's New Albion, Barclay's Sketches, Mickle's Reminiscences.

⁷ [Protest.] "I, William Keift, Director General, in behalf of the High and Mighty Lords of the States General of the United Provinces, of his Highness of Orange, and the Noble Lords Directors of the Privileged West India Company, residing in New Netherland, make known to you, Robert Cogswell and your associates, not to build nor plant on the South River, lying within the limits of New Netherland, nor on the lands lying along there, as lawfully belonging to us, by our possessing the same long years ago, before it was frequented by any Christians, as appears by our forts which we have thereon, and also the mouth of the rivers sealed with our blood, and the soil itself, most of which has been purchased and paid for by us, unless you will settle under the Lords, the States and the noble West India Company, and swear allegiance and become subject to them as the other inhabitants have done. Failing whereof we protest against all damages and losses that may accrue therefrom, and desire to be holden innocent thereof."

mander replied that it was not their intention to settle under any government, if any other place could be found, but that should they settle within the limits of the States General, they would become subject to the government. The company then proceeded. They finally reached a place which they selected for a settlement not far from the Delaware, on a small stream called Varenken's Kill.⁸

Whether these settlers were at all aware of the rights and claims of the Earl Palatine of Albion, at the time they entered the province, is unknown. But finding him in the country as the holder of a grant from the English Crown, they were ready to submit to his rule, and hence upon being visited by persons commissioned by the Earl, they swore fealty to him, as the Palatine of Albion.⁹

But the company had not long been settled in their new situation before they found themselves in need of the aid and protection which their present ruler was in no condition to give.

Their settlement had been observed by Jan Janssen Van Ilpendam, the Dutch Commandant, who resided on the Delaware at Fort Nassau, and information of what was passing was soon transmitted to the Director at Fort Amsterdam. Keift immediately ordered that two vessels should be prepared and despatched to the Delaware, with orders to visit the English and to reduce or disperse the colony. This order was speedily obeyed; the Dutch made an entrance upon the settlement, took possession of the goods, burned the houses, and detained a number of the people as prisoners.

The Swedes who were established upon the Delaware gave aid and assistance to the Dutch in this attack upon the English colony.¹⁰

⁸ Otherwise called Hog Creek, now Salem Creek.

⁹ Plantagenet's New Albion, Barclay's Sketches, Mickle's Reminiscences.

¹⁰ The English account of these proceedings is as follows: "That by their agents they had duly purchased of the Indian Sachems and their companions, several tracts or parcels of land on both sides of the Delaware Bay or River, to which neither the Dutch or the Swedes had any just title, yet without any legal protest or warning *Monsieur* Keift, the Dutch Governor, sent armed men in 1642, and by force and in an hostile way burn their trading houses, seized and for some time detained the goods in it, not suffering their servants so much as to

After a period, an attempt was made from another direction, for the purpose of establishing a colony within the province of New Albion.

The storm of political agitation was now arising in England, and its violence had already become such as to shake the State and the Throne. The minds of men were ill at ease, and such as were disposed to seek tranquillity and peace, rather than to share in the danger, the glory, and the guilt of the coming strife, were anxious to find an asylum in some distant land. A number of "Knights and Gentlemen" who were thus disposed, associated together and chose one of their company to visit the English plantations in America, and select a place for a settlement. The individual chosen for this purpose was Beauchamp Plantagenet. He proceeded at once upon his errand, and after extensive travel in the several colonies, finally fixed upon the province of New Albion. He made application to the Lord Governor then in the country, and obtained under the seal of the province, a grant of ten thousand acres of land. This tract was called the Manor of Belvill. Some time afterwards, Plantagenet returned, in order to attend the removal of his companions, and nearly at the same time, the Earl Palatine also departed from the province, being obliged to return to England for aid and supplies.¹¹ Upon their

take a just inventory of them; he also seized their boat, and for a while kept their men prisoners. That the said Dutch Governor compelled Mr. Lambertson, their agent, to give in at the Mannhattans, an account of what beavers he had traded within New Haven limits at Delaware, and to pay recognition for the same. That John Johnson, (Jan Janssen Van Ipendam,) the Dutch agent, with the Swedes Governor at the Delaware, charged Mr. Lambertson, as if he had plotted with the Indians, to cut them off. A capital crime, for which they imprisoned and tried him, but could bring no proof to satisfy themselves who both accused, and sat as judges, yet they set a fine upon him, for trading within New Haven limits there." Hazard's Register, vol. 1, p. 17.

This statement is hardly correct in regard to the want of any protest against the proceedings, the protest has been given.

¹¹ In Winthrop's History it is stated, that in 1648 Sir Edmund Pleyden arrived at Boston, on his way to England, and that he had been in *Virginia* seven years. It is possible that the Earl may really have been in *Virginia* during his visit, though a considerable part of the period of his sojourn was spent in his own province. See upon this point, and also for general remarks respecting New Albion, King's Discourse before the New Jersey Historical Society.

arrival in Europe, the Earl Palatine and Plantagenet again met, and they then exerted themselves to revive the energies of the New Albion Company. For this purpose Plantagenet wrote and published "A Description of the Province of New Albion," dedicating it to the officers and members of the company; the writer himself having become a member of the body. To excite the greater interest, a sort of order of Knighthood was instituted, with a view to enlist persons to go to the province and engage in efforts for the conversion of the natives, to the Christian faith. Those who should devote themselves to this service, were to be associated under the name and title of "The Albion Knights of the Conversion of the Twenty-Three Kings." This title had reference to the number of Indian Kings supposed to be living and ruling within the province. But all these efforts fell short of their object. The "three thousand able trained men" were never enlisted, and no one of the Albion Knights of the Conversion ever arrived at the field of labor. Nor did the Earl Palatine himself, or his coadjutor, Plantagenet, find a fit opportunity again to visit the province.

What number of persons ever resided in New Albion under the Palatine's rule, or what was their condition, is but imperfectly known. A fort called Eriwoneck was erected upon the Delaware near the mouth of the Pensaukin, and this post was held during the greater part of the Earls sojourn, by a small body of men. The New Haven colony was said to consist of near fifty families, and there were also a few traders from Virginia residing at different places. These companies, together with the people on the Isle of Plowden, or Long Island, made up the population of the Palatine's province. One of the manors called Watcessit, was elected as the principal residence of the Earl, and this, it may be supposed, was the seat of authority. A plan of government was also fully devised; as described by Plantagenet, it was different in some respects from that laid down in the patent. A particular notice of its provisions may not be necessary, as it was never brought into actual operation, but its general character is worthy of notice. It was mild and liberal in temper.

In religious matters the most entire freedom was given. Some fundamental doctrines, as well as certain forms, were to be settled

by acts of Parliament, yet dissent was not to be punished; indeed, all railing against any one on account of religion, was deemed an offence. For, it was said "this argument or persuasion in religion, ceremonies, or church discipline, should be acted in mildness, love, charity, and gentle language." This noble sentiment carried out as it was to have been into actual practice, gives one of the finest, as well as earliest examples of religious toleration, known to the world. In regard to this particular, full justice has not been done to the lawgiver of New Albion. Williams and Calvert have been lauded, and justly lauded, as being the first to remove the shackles of religious intolerance, and give full liberty to the mind of man in the communion it holds with its Great Creator. Williams was doubtless the first to proclaim the principle "that the civil magistrate has no right to restrain or direct the consciences of men." Calvert followed closely in his track. To these men let honor be given. But they have been represented as standing entirely alone until the appearance of Penn. This is not just or true. Ployden may not have advanced to the same point; he retained the shadow of a State religion; but he offered the fullest freedom, and the fullest protection to all, and gave his voice in favor of mildness, charity, and love. Though his designs were not successful, though the work he projected fell short of completion, yet he deserves to be ranked with the benefactors of our race, and New Albion is entitled to a higher place in the history of human progress, than is often allotted to older, and greater, and more fortunate States.

No collision, nor indeed any intercourse is known to have occurred between the authorities of New Albion and New Netherland. The attack of the Dutch upon the settlement at Varekens Kill, led to no further hostilities.

After that occurrence, and the retirement of the forces that had been sent from Manhattan, Van Ilpendam the Commandant of Fort Nassau, continued at his post, and he was directed by Keift "to take care and preserve dominion, and to defend the honor of the High and Mighty States, and of the Honorable West India Company."¹² But however necessary this vigilance may have

¹² Acrelius.

been, to prevent the advancement of others, it was scarcely required toward the Earl Palatine of Albion. If possessed of any ability, he was little disposed to a hostile movement in opposition to the Dutch. In their late aggression the blow had been aimed at New Haven, rather than New Albion, and in addition to this, the Earl was less apprehensive as to the principal actors in the movement, than as to their accessories. He is reported to have said "that he would have no misunderstanding with the Dutch, though he was much offended with, and bore a grudge against the Swedes."¹³

The latter people had taken full possession in a part of his province, and were likely to remain, and to obtain assistance in repelling *their* encroachments, was a principal object with the Earl, in his return to Europe.

The establishment of the Swedes upon the Delaware is a point to be considered.

The Swedish nation had not participated in the early discoveries in America, or in the first attempts to establish settlements. But they were a hardy and vigorous people, and were alive to the stir, and the stirring influences of that eventful period. The advances made by other nations in the New World, had not passed unheeded, and at this time their attention was particularly directed towards the movements and successes of the Dutch. William Usselinx, a Hollander, who had settled at Stockholm and become an eminent merchant there, had, from a connexion in business with the Dutch West India Company, acquired a full knowledge of the plans and proceedings of that body, and of the advantages either derived or expected from the colonial establishments in New Netherland. Usselinx was led to conceive that it would be to the interest of the Swedish Government to encourage a similar enterprize, and he finally proposed his views upon the subject, to Gustavus Adolphus, the King.¹⁴ His suggestions were favorably

¹³ Hartger's Beschrijvinge Van Virginie and Niew Nederland.

¹⁴ Usselinx urged in support of the measure that "the christian religion would by that means be planted amongst the heathens,—that his Majesty's dominions would be enlarged, his treasury enriched, and the people's burdens at home diminished. That it would produce to the country many positive advantages, and a very profitable trade, and that the Swedes possessed all the means for carrying it on to advantage." Clay's Annals, p. 14.

received by the Sovereign, and measures for the prosecution of the plan were immediately adopted. But the occurrence of war, and the subsequent death of the King, together with other unfavorable events, prevented the pursuance of the design, at the time, or in the manner proposed.¹⁵ Yet it was not forgotten, and after a period it was again brought forward and urged upon the notice of the Swedish Government. The principal mover in this new effort was a person who, in the course of his past experience had acquired a degree of knowledge in relation to such an attempt. This individual was Peter Minuet, the former Governor of the Province of New Netherland, but who, as has already been noticed, had been recalled from his post. Either from a feeling of resentment against his former employers and a desire to establish a rival interest, or from attachment to the country in which he had resided, and a desire to return there, or it may be merely

¹⁵ Under the favor of Gustavus a company was established with power to trade to Asia, Africa, and the Straits of Magellan. The plan was made known in an edict issued by the King on the 2d of July, 1626. Harte in his life of Gustavus says, that the scheme for the establishment of colonies in the West Indies greatly delighted the senators, and that many persons subscribed liberally and readily, in conformity to the example of the King, and Campanius mentions a number of persons including princes, nobles and principal officers, who were subscribers to the plan.

Rudman further states, that ships and all necessities were provided, and Harte asserts that "a little Swedish squadron" actually sailed for America, but that "the Spaniards contrived dextrously enough to make themselves masters of it." Campanius also makes a similar statement, and adds, that the ships had been stopped by the Spaniards, in order to favor the Poles and the Emperor of Germany, then engaged in a war with the Swedes. To what precise point the undertaking was carried, it is not easy to determine, but it seems to be decided that it was not then brought to final completion. Campanius indeed narrates, that America was visited and settled by the Swedes in the reign of Gustavus, and several authorities have followed him in the statement. But the best authorities agree in the conclusion, that no settlement was made until the following reign, and that if any Swedes were in America at an earlier period it could only have been a few individuals, who had adventured with the Dutch. See Clay's Annals, O'Callaghan's New Netherland, Gordon's New Jersey, Mickle's Reminiscences, Whitehead's East Jersey, and Ferris's Settlements on the Delaware.

from a lack of other employment, Minuet had sought the patronage of the Swedes, and strongly recommended that a colony should be settled in America. He also designated as a proper situation, the South or Delaware River.¹⁶ The projected undertaking was warmly approved by Queen Christina, who had succeeded to the Swedish Throne, and through her favor, and the patronage of Oxerstein, the Chancellor of the Kingdom, Minuet was enabled to carry out his design. An expedition was fitted out and committed to his care, furnished with all the necessary stores and with articles of merchandize, intended for traffic with the Indian tribes. A company of settlers was also carried out.

The expedition arrived in the Delaware early in the season, in the year 1638, and the emigrants landed at Inlopen, (otherwise called Hindlopen,) on the western side of the bay.

Presently after the arrival of the Swedes, they were visited by some of the Dutch who resided on the Delaware, to whom the Swedish Commandant stated, that he had entered the river on his way to the West Indies, to procure supplies, and that he should presently depart.¹⁷ But instead of leaving the Delaware, he ascended the stream, and selected a place for a permanent settlement; the situation was on the borders of a stream which was called Christina, and a fort was immediately erected, which was also named Christina, in honor of the Queen. After having thus secured himself in the country, Minuet opened a communication with the neighboring tribes of natives, and purchased from them an extent of territory reaching from Inlopen to the falls at Santickan, and as far inward in breadth, as the settlers might require. At this time no land was acquired on the eastern side of the Delaware Bay or River, but not long afterwards a portion of country was secured on that border, in a manner, and for reasons to be noticed hereafter.

¹⁶ Rudman states, from information given by an ancient Swede, that Minuet "profiting by his knowledge of the country, went to Sweden, and informed the principal persons that the Dutch had settled on the *east* side of the Delaware, but that the whole of the *western* side was unoccupied, except by the Indians. He urged a settlement there, and offered to conduct the enterprise." Clay's Annals, p. 16.

¹⁷ O'Callaghan, p. 189.

The Swedes had thus succeeded in effecting a settlement in the country, yet their situation was such as to expose them to no little difficulty. They had placed themselves upon lands that were subject to other, and older claims, and hence, at the very beginning of their course, they were met by opposing interests. Both the English and the Dutch asserted a right to these same lands. This fact was not unknown to the Swedes, though they may not have been apprized of the particular nature, or the full extent of the claims in question. The English claim was two-fold in character, or kind, first a general right, founded upon the ancient ground of prior discovery, which right was vested in the Crown: secondly, one of a special nature, based upon such specific grants as had been made by the Sovereign, either to bodies, or to particular persons. The former of these, however, according to Swedish historians, had been fully ceded by the English King. These historians relate that some time prior to the advent of the Swedish colonists, application was made to Charles, the English King, and that he then renounced the claim of his nation, in favor of the Swedes.¹⁸

But the declaration of the Swedish historians upon this subject, is without support, no such treaty as is here mentioned is known to exist, and the evidence of its having been ever concluded, has not been produced. But it is in any case clear, that some time previous to the coming of the Swedes, the country upon which they entered, had been conveyed by the English King, in the fullest manner, to some of his own subjects. According to the best authorities, the arrival of the Swedes was in 1638, and in 1632 Maryland had been granted to Lord Baltimore, and in 1634 New Albion was given to Sir Edmund Ployden and his associates, and these provinces included the whole of the country, afterwards occupied by the Swedish settlers. So far as an English right was concerned, the conveyances to Lord Baltimore and Earl Ployden were conclusive against the Swedes, unless it could be shown that *they* were in possession of an earlier grant from the English King, and this as already remarked, has not been shown. It has not

¹⁸ The date of the transaction is differently given. Acrelius says that it was in 1634; Campanius states, that it was "in or about the year 1631."

been shown that any conveyance whatever was made to them by Charles I., and if made, it was, even according to Swedish history, later in date than that to Lord Baltimore.¹⁹

But the claims of the Dutch were also in the way of the Swedish adventurers, and an important advantage was held by the Dutch in their actual possession of the country.²⁰ But it is asserted that the Swedes had also acquired the rights of the Dutch in these parts, by actual purchase, and a writer declares that "the treaty which confirmed that purchase was shown me by the Honorable Mr. Secretary, Elias Palmskoild."²¹ But the statements of this writer are frequently loose and inaccurate, and such a "treaty" could not have been readily concluded. The claim of the Dutch was even more complicated than that of the English; it lay with the States General, the West India Company, and the different bodies of Patroons. Whether the treaty between the Swedes and the Dutch, if really concluded at all, had been so formed as to embrace the claims of these several parties, is entirely unknown.²²

But it is certain, that the course of the Dutch was not such as accorded with the idea of an entire surrender of their rights and claims. So soon as it was known that the Swedes had remained in the Delaware, and were preparing to establish a settlement,

¹⁹ Acrelius who is usually much more correct than Campanius states, that the grant from Charles to the Swedes was in 1634, which was two years subsequent to the Maryland grant. Maryland extended to the fortieth degree of latitude, and therefore included the greater part of the Swedish purchase, and the place of their earliest settlement.

²⁰ Some writers assert that the whole of the settlements made by the Dutch, had been destroyed by the Indians before the coming of the Swedes. But the settlement at Zwaenidel was the only one that had thus been destroyed. Fort Nassua had never been attacked by the Indians and it had now been enlarged; whether the party that visited the Swedes upon their arrival, had been detached from this post, is uncertain, but it is clear that they were residing in the country. It is also stated by Huddle in a formal report upon the state of the country, that at the time when the Swedes first came, there was a sufficient garrison on the Delaware "with men and ammunitions of war."

²¹ Campanius.

²² At this time the West India Company had acquired the control of Zwaenidel. The Patroons had sold their rights to the Company in the year 1630. O'Callaghan, p. 365.

they were visited by an officer from Fort Nassau, who waited on the Swedish Commandant and requested him to "produce his commission." Minuet refused, and furthermore asserted, that his Queen had an equal right with the Dutch, and that in virtue of such right he should proceed, without delay, to establish a settlement. Information of these proceedings was forwarded to Fort Amsterdam, and Governor Keift immediately despatched a messenger, bearing a formal protest against the movements of the Swedes.²³

The Protest was received, but it was productive of no effect. Whether the Swedes were in possession of a sufficient claim to the country, or not, they were resolved to remain, and to prosecute their plans. Minuet entrenched himself at Fort Christiana, and prepared to defend his colony against every aggressor.²⁴

²³ [Protest.]

²⁴ *Thursday, 6th May, 1683.*

"I William Keift, Director General of the New Netherlands, residing on the Island of Manhattan, in Fort Amsterdam, under the government that appertains to the high and mighty States General, of the United Netherlands, and to the West India Company, privileged by the Senate Chamber in Amsterdam, make known to thee Peter Minuet who stylest thyself commander in the service of her Majesty the Queen of Sweden, that the whole South River of the New Netherlands, both the upper and the lower, has been our property for many years, occupied with forts, and sealed by our blood, which also was done when thou wast in the service of the New Netherlands, and is therefore well known to thee. But as thou hast come between our forts, to erect a fort to our damage and injury, which we never will permit; as we also believe that her Swedish majesty has not empowered thee to erect fortifications on our coasts and rivers, or to settle people on the lands adjoining, or to trade in peltries, or to undertake any other thing to our prejudice. Now therefore, we protest against all such encroachments, and all the evil consequences from the same, as bloodshed, sedition, and whatever injury our trading company may suffer; and declare that we shall protect our rights in a manner that shall appear most advisable."

* The Rev. J. C. Clay, the author of the *Annals*, whose connexion with the Swedish people and entire acquaintance with their history, together with his general intelligence, entitle his opinions to the greatest weight, thus speaks of the Swedish claim "I have seen nothing to confirm the statements of Campanius, that the Swedes had acquired a claim to the country on the Delaware through grants from the English, and the Dutch. We know that Campanius erred in saying that the Swedes commenced their settlement in 1631, and in like manner does he appear to have erred in the other particular. Most writers represent the rights of the Swedes as being acquired by purchase from the natives of the country." Letter to the Author.

Minuet was careful to follow up the advantages that had thus been gained; he employed himself in extending the limits and strengthening the interests of the colony he had planted. Trade was opened with the natives, and at different places "the arms of the Crown of Sweedland" were erected, in token of Sovereignty. The province was said to extend "from the borders of the Sea to Cape Henlopen, in returning south-west towards Godyn's Bay; thence towards the great South River, as far as the Minquaas-Kill, where Fort Christina is situated; and thence again towards South River, and the whole to a place which the Savages call Sankikan." It was thirty German miles in length, and in width, "as much of the country as they chose to take." To this province the name of New Sweden was given.

At an early period the attention of the Swedish Government began to be directed toward this new possession, and measures were concluded upon, to strengthen the colony, and to place it upon a durable basis. According to the policy adopted by the Government, the management of trade, and the internal affairs of the province, were committed to associated bodies, whilst the principal sovereignty and the direction of the general government, were retained by the Crown. A body known by the name of the Navigation Company, became invested with the right of property in the soil of the province.²⁵ The character and object, of this company were similar in many particulars to those of the West India Company of Holland, though its political authority was far less extensive; in fact, it had little concern in matters of government. All the officers of the province were appointed by the Sovereign of Sweden, who also prescribed their duties, and gave all instructions for the administration of public affairs.

In the year 1640, several companies of emigrants departed from the mother country for New Sweden, and a license is on record, given to Jacob Powelson for a vessel commanded by him, and which was departing for the province, laden with men, cattle, and other articles for the cultivation of the country.²⁶

²⁵ It is not certain whether the Navigation Company became possessed of a title to the whole of the land in New Sweden, or only to certain portions.

²⁶ Gordon, p. 11.

In the same year a charter or grant was given to a company who were about to establish a colony in the vicinity of Fort Christina; by the conditions of this charter, the grantees became possessed of privileges and powers similar in most respects to those held by the Patroons in New Netherland.

The Dutch authorities on the Delaware and at New Amsterdam, with an apathy that contrasted strangely with their previous activity and promptitude, made no opposition to these movements of the Swedes; on the contrary, a number of Hollanders actually settled within the limits of New Sweden, not far from Fort Christina, and submitted themselves to the government of the province.

These settlers were received with a degree of favor, they were placed in the charge of Jost De Bogart, who had been commissioned by the Queen of Sweden as an Agent or Superintendent at Fort Christina.²⁷

Whether the forbearance of the Dutch at this period may be attributed to necessity or to choice, it gave an opportunity to the Swedish Commandant to strengthen and establish the settlement. This advantage was not neglected by Minuet, and an occasion presently occurred which led him to attempt a further extension of his bounds.

In 1611, the English colony detached from New Haven, arrived on the Delaware and effected a settlement at Vareken's Kill, as has already been related. The near approach of these settlers excited uneasiness in New Sweden; they were likely to prove rivals in trade, and might also prove rivals in power. Minuet was desirous to avert the danger. The lands that were occupied

* The character and position of this officer is somewhat uncertain. He has sometimes been represented merely as the "Director of all the Hollanders who had settled in New Sweden." That he had a special relation to these settlers, is certain, but he appears to have been charged with other duties. He was required, and had engaged "to aid by his counsel and actions, the persons who are at Fort Christina and those who may afterwards be sent there from Sweden, and to procure as occasion may present, whatever will be most advantageous to her Majesty and the Crown of Sweden, and moreover, was to let no opportunity pass of sending information to Sweden which may be useful to her Majesty and the Crown.

by the English colonists had already been obtained by them, from the natives of the country, and the Swedes insisted in regard to themselves, that a purchase from the Indians "the owners of the soil," gave all the right that was needed.²⁸ But unless they were ignorant of the English purchase, the conclusion must be drawn, that the Indian right was only admitted by the Swedes, when it turned to their own advantage. They resolved to secure a title to the country possessed by the English; agents were despatched by whom an extent of land was acquired, reaching from the mouth of the Delaware, to a point above the settlement at Vareken's Kill, and thus the English colony was completely environed.²⁹ This was the time, and the occasion of the extension of the Swedish claim to the eastern side of the Delaware River and Bay.

Nearly at this time, Minuet died at Fort Christina. He had, says an early author,³⁰ "done great service to the Swedish colony. During three years, he protected his small fort which the Dutch never attempted."³¹

Peter Hollandare, who had been for some time residing in the

²⁸ Authorities agree in stating that lands on both sides of the Delaware had been purchased by agents of the New Haven colony, and it is supposed that the settlement on Salem Creek was within the limits of this purchase.

²⁹ The portion of country now purchased by the Swedes, extended from Cape May to the Narriticon, or Raccoon Creek. The purchase was made by the agents of the Navigation Company, yet the act may be considered as a part of the policy of the government.

³⁰ Acrelius.

³¹ A late writer remarks in reference to the course of the Dutch at this period, "that Director Keift found it much easier and more economical to issue a paper protest than to equip a squadron or send an army. Beside this, by the charter of the West India Company, it had not the power to declare war or to commence hostilities, either against a foreign State or the native Indians, without the consent of the States General, and in case war should be waged against the company or settlements, the States were only bound to furnish one half the means of equipping and manning a squadron for the occasion; after it went into service, the expenses of maintaining the armament were to be paid wholly by the company. This wise regulation of the money loving legislators of Holland had, perhaps, more to do in the preservation of peace, than any supposed phlegm or obtusity of feeling in the Dutch character." Ferris's Settlement on the Delaware.

province, entered upon office as the successor of Minuet, but his term of service was but brief, as he returned to Sweden in the following year. He was a soldier by profession, and was afterwards appointed Commander of the Naval Asylum at Stockholm. It has been observed that his career was not marked by any act, either of injury or benefit to the colony.³²

But there is reason to believe that an occurrence of some importance in the history of the period took place during the time of the administration of Hollandare. The purchase which had been made on the eastern side of the Delaware, for the purpose of bringing the English under the control of New Sweden, had been followed by no immediate effects. But a circumstance soon occurred which afforded an opportunity for the adoption of more prompt and decisive measures. The settlement of the English had excited no less uneasiness in New Netherland, than in New Sweden, and Governor Keift had resolved upon a more summary mode of proceeding. As has already been mentioned, a force was despatched from Fort Amsterdam, with orders to disperse the English on the Delaware, and the Schuylkill; a small body having also settled on the latter stream.³³ The Swedes resolved to aid and assist in the enterprize, and the result has already been seen. The English settlement was entirely destroyed. The fortunes of the colony at Varenken's Kill were no less singular than disastrous. The parent colony was too far distant to give them support and assistance, the Governor of New Albion, to whom they had acknowledged allegiance, was destitute of power, and two other States, who were jealous of each other, agreed in an attack upon the defenceless post.³⁴

³² Ferris.

³³ The settlers on the Schuylkill are represented by some authorities as being a part of the colony from New Haven; by others, as a company who had seated themselves there, under a Patent or other authority, from Lord Baltimore. The latter is the statement generally received.

³⁴ The statement that the attack upon the English was made in the time of Hollandare, is made upon the authority of dates. It is generally admitted that the attack was made in 1642, and the successor of Hollandare did not arrive in the province, according to the best authorities, until the beginning of the following year.

But the temporary junction between the Dutch and the Swedes though it resulted in the attainment of their immediate purpose, was followed by no union either of feeling or of action, between themselves. On the contrary, by directly involving their interests, it led to more decided opposition in their future course.

Preparations had now been made by the government of Sweden for the fuller establishment and maintainance of government, within the limits of their province in America. The Queen issued a decree assigning a fund for defraying the expenses of government, and supporting the garrisons, and the several persons employed in the country. For these purposes there was appropriated the sum of two millions six hundred and nineteen Rix Dollars, which was to be raised each year, in Sweden, from an excise on tobacco.³⁵ In the same year Colonel John Printz was appointed Governor, and he immediately departed for the province with a colony of settlers. His commission which was dated the 16th of August, 1642, authorized him to assume the name or style of the GOVERNOR OF NEW SWEDEN.³⁶

³⁵ It was afterwards found that the amount raised in this manner was not more than half the sum mentioned, and also that a great part of the amount actually obtained, had been used for other purposes of the crown, particularly for the construction of the Chateau of Stockholm. During this period the expenses of the colonial government were defrayed from the revenues of the company, it was therefore decreed by the Queen that the company should be refunded, and in case the excise should not yield a sufficient revenue, the deficit was to be made up from other resources of the crown. Hazard's Register.

³⁶ [By the Queen.]

"Aug. 20th, 1642.

"To the liege subjects and respective members of the Kingdom and the Chamber of Finance, greeting, as we have appointed Lieutenant Colonel John Printz, Governor of New Sweden, and have judged proper to give him soldiers and officers to assist him in discharging fully the duties of his station, and as we have arranged a certain appropriation for the support of his troops and their annual pay, as you will perceive by the copy hereunto annexed, we therefore desire and command, that you will follow exactly our said resolution and regulations, and observe that each person employed in New Sweden shall receive his support according to the foregoing appropriation." By this regulation the Governor received the sum of Twelve Hundred Rix Dollars; a Lieutenant Governor, Sixteen Dollars a month; a Sergeant Major, ten; a Corporal, six; a gunner, eight; trumpeter, six; drummer five; to twenty-four soldiers, four, each; to a paymaster, ten; a secretary, eight; a barber, ten, and a provost, six. Swedish Documents.

The Governor was furnished with ample instructions in which the course to be pursued in the administration of government was fully set forth.

He was directed to take care concerning the limits of the province, and to see that the full extent of territory was secured, both on the eastern, and the western side of the river. The contract made for lands on the eastern side was to be fully maintained, in order that the English people thereon might be attracted under the authority and power of her Majesty. Yet the Governor might endeavour to cause their removal, and for this purpose, "to work underhand as much as possible with good manners, and with success."

In relation to police, government and justice were to be administered in the name of her Majesty, and the Crown of Sweden.

The Governor must decide all controversies according to the laws, customs and usages of Sweden, and be governed by these also, in all other things. He was empowered to bring to obedience and order, all mutinous and disorderly persons who would not live in peace, and to punish great offenders, not only by imprisonment and other punishment, but even with death, yet not otherwise than according to the ordinances and legal forms, and after having considered and examined the case, and consulted with the most noted and prudent persons he could find in the country.

He was to direct the operations of the settlers, according to his best discretion, so as to secure a good cultivation of the country, and to promote the advantage and profit of those interested therein. He might choose a place for his own residence, and also a situation for building a fortress, but must pay particular attention that by such fortress the South River might be shut, or commanded. He was not to interfere with the Dutch in their possessions, and was to represent to them, that her Majesty had no other than reasonable and just intentions, seeking only to occupy and use the lands they had purchased from *the legitimate proprietors*. But if the Dutch should show hostile intentions, her Majesty (not being able to judge on the spot, gave authority to the Governor to remove all disputes by friendly negotiation, and this not succeeding, "he might think of the means of repelling force by force."

The Dutch colonists who had settled in the province under

allegiance to the Crown of Sweden, were to retain the privileges that had been granted them, but they were to be removed to a greater distance from Fort Christina, if this could be done without actual compulsion. He was to treat the natives with humanity and mildness, to see that neither injustice or violence was done them, but on the contrary, to labor that these people be instructed in the christian religion and the divine service.

He was required, above all, to labor and watch that he might render in all things to Almighty God, the true worship that is his due, and the glory, praise and homage which belong to him, and to take good measures that divine service should be performed according to the true confession of Augsberg, the council of Upsal, and the ceremonies of the Swedish Church; having care that all men, and especially the youth, be well instructed in all the parts of Christianity, and that a good ecclesiastical discipline be observed and maintained. The Dutch settlers might be indulged in the exercise of the Reformed religion.

The Governor was exhorted in general terms, to comport himself in a manner becoming a faithful patriot.

From these instructions an opinion may be formed, not only as to the nature of the government that was to be established, but also, as to the claim of the Swedes, to the country they occupied.

No mention is here made of a treaty with the English, or a purchase from the Dutch; the claim as now presented, is only to lands that had been purchased from the Indians who are called "the legitimate proprietors." But such a claim, whether just in itself, or not, could scarcely be urged to much effect, by the Swedish settlers. No European people, not even the Swedes themselves, had paid any regard at their first appearance in the country, to the rights of the natives; lands were entered upon and possessed, without the least attention to their wishes or will, or if their claim was considered at all, it was merely as an incident that would follow the superior right. According to a principle which had become incorporated into the code of international law, the claim of the natives could not be taken as a foundation of title. But had the case been otherwise, had the rights of the natives been acknowledged as distinct and independent, or even superior, still the Swedes would have gained but little from such a concession.

These rights had already been acquired by others. Such at least was the case in regard to a portion of the territory included in New Sweden. Godyn and Bloemmaert had purchased lands on both sides of the Delaware Bay, and the New Haven colony had obtained a similar claim. The natives, it would seem, were disposed to sell, as often as a purchaser appeared.

The Government of New Sweden as set forth in the instructions of Governor Printz, was perfectly simple in character. The laws and customs of the mother country were to be extended to the province, but the whole administration of law, both executive and judicial, was placed in the hands of a single individual, the Governor, only that in certain cases he was to act with a council selected by himself, from the "most noted and prudent persons" in the province. With these limitations, property, liberty, and life, were entirely at his disposal.

The Governor selected for his residence a small Island on the Delaware which the natives called Tennacong, (the name has since degenerated into Tinnieum,) which Island was afterwards given to the Governor in fee. At this place the Governor erected a number of dwellings, and a fort, which he called Fort Gottenberg; here was the Capitol of New Sweden.

Governor Printz exhibited activity and vigor in the discharge of his duties. He was relieved from the necessity of carrying out his instructions in regard to the English colony, by the occurrences that had taken place before his arrival, but he assumed immediate control, in this portion of the province. In order to provide against further encroachment, as well as for the more perfect fulfilment of the direction to "shut up the Delaware," a fort was erected on this border of the Delaware, not far from the mouth of the Varken's Kill.³⁷ Three forts were thus erected upon the river, and were sufficiently armed and garrisoned,³⁸ and

³⁷ This Fort was erected by Printz soon after his arrival; it was on the south side of Salem Creek, (otherwise called Varken's Kill,) near its junction with the Delaware. The Fort was called Ellsborg, afterwards, from the number of mosquitoes that infested the place, it came to be called Myggenborg. The name of the Fort is still preserved in the name Elsingborg or Elsingborough which now belongs to a township in the vicinity.

³⁸ Christina, Fort Gottenberg, and Ellsborg.

under the management of Governor Printz the means at command would be used to the greatest effect. He had no reluctance to oppose "force to force." All vessels passing the Swedish posts were compelled to cast their anchors, or lower their flags, not excepting, as it is said, those of the "noble West India Company," and some of their vessels were injured by cannon balls, and were in eminent danger of losing their crews.³⁹

The internal administration of Governor Printz was positive and rigid, and in some of his acts he not only exceeded the authority given in his instructions, but assumed an independence of the Swedish government itself. Yet some reason may be urged in extenuation of his course, at least in regard to certain particulars. A design was entertained by the government, to use New Sweden as a penal settlement, and a number of convicts and other offenders were sent to the province, to be employed in various ways.⁴⁰ Governor Printz forbade a party of these emigrants to land, and compelled the commander of the ships to carry them back to Sweden. This assumption of power, however unwarranted, was probably the means of arresting a policy which must have proved inimical to order and government, and pernicious to the interests of the province. Had it been fully pursued, the mother country would have been freed from a number of vicious inhabitants, but New Sweden might have been rendered a reproach to the parent State, and a disgrace to the New World.⁴¹

It was not to be supposed that the authorities of New Nether-

³⁹ Hudde's Report.

⁴⁰ "The people who went or were sent from Sweden to America were of two kinds; the principal part of them consisted of the company's servants, who were employed by them in various ways; the others were those who went to the country to better their fortunes; they enjoyed several privileges, they were at liberty to build and settle where they thought proper, and to return home when they pleased. There was a third class consisting of *nachfactors and vagabonds*. These were to remain in slavery, and were employed in digging the earth, hrowing up trenches, and erecting walls and other fortifications; the others had to intercourse with them, but a particular spot was chosen for them to reside upon." Campanius.

⁴¹ For some years the Government continued to send convicts to New Sweden, but not in great numbers.

land would finally submit, and allow the country they had claimed and held, entirely to pass from under their control. They had not attacked the English upon the Delaware and the Schuylkill, in order that the advantages obtained, might be held by the Swedes; and the positive and forcible measures of Printz, though causing delay, were not such as to secure submission.

In 1646, Van Ilpendam, the Commandant of Fort Nassau, fell under the suspicion of want of fidelity, and in consequence, was removed from his place; but not long afterwards Andreas Hudde was ordered to the Delaware, and directed to assume the principal command. Hudde was active and vigilant, and speedily adopted measures for regaining possession of the country, and for the recovery of trade. A principal means by which the Swedes and the Dutch conducted their opposition, was the agreements they made with the Indian tribes; by these, new claims were acquired to portions of land, and also to certain privileges in traffic. In the pursuance of this singular strife, the Dutch became possessed of portions of territory near to the seat of Swedish authority, and the arms and insignia of the West India Company were erected thereon.⁴² This proceeding excited immediate opposition on the part of the Swedes; the offensive ensign was torn to the ground, and Governor Printz declared, that he would have done the same had it been the colors of their High Mightinesses, the States General of Holland. He also addressed a protest to Hudde, warning him "to discontinue the injuries of which he had been guilty against the Royal Majesty of Sweden, my most gracious Queen; not showing the least respect to her Royal Majesty's magnificence, reputation, and dignity." Hudde disclaimed all intention of encroaching on the rights of the Swedes. "The place we possess," he said, "we held in just deed, perhaps before the name of the South River was heard of in Sweden." Angry contention only short of actual violence ensued. Printz was imperious and passionate, and

⁴² In pursuance of special direction, Hudde had purchased of the natives a tract of land on the western shore, "about a mile distant from Fort Nassau, to the north." It is supposed to have been the site on which the city of Philadelphia now stands. See Ferris's *Settlement on the Delaware*, p. 74.

Hudde unyielding and positive. But the crisis which seemed to be threatened was deferred for a time.

The situation of affairs in New Netherland at this juncture, was not favorable to a vigorous prosecution of its claims, and the representations and demands of the Commandant on the Delaware, calling for assistance and support, did not meet with a ready response. Director Keift had become involved in difficulties which for the time, diverted attention from the encroachments of the Swedes; the resources of his province were consumed by the long continuance of the Indian war; much dissatisfaction with his measures was felt and expressed by his own people, and the English upon his northern possessions continued to strengthen their settlements, and to urge their claims.

The people at New Haven had been greatly excited on account of the destruction of their colony on the Delaware, by the Dutch and the Swedes, and measures had been immediately adopted for obtaining redress. A statement setting forth the injuries they had sustained, was introduced to the notice of the Commissioners of the United Colonies of New England, and the subject was presently taken up in that body.¹³ Upon full consideration, it was resolved, that letters should be directed to the offending parties, reciting the facts, and demanding satisfaction.¹⁴ Accordingly, in September, 1643, letters were written both to Governor Keift, and Governor Printz; these letters were signed by John Winthrop, Governor of Massachusetts colony, and President of the Commissioners for the United Colonies of New

¹³ The union between the several colonies of New England was formed in 1643. It was designed for mutual defence against the Savages, and for protection and security against the claims and encroachments of the Dutch. The parties to the confederacy were Massachusetts, New Plymouth, Connecticut and New Haven. By the articles of confederation, the colonies entered into "a firm and perpetual league of friendship and amity for offence and defence, mutual advice and succour upon all just occasions, both for preserving and propagating the truth and liberties of the Gospel, and for their own defence and welfare." The affairs of the United Colonies were to be managed by a legislature to consist of two persons, to be styled Commissioners, to be chosen by each colony. It was to this legislature that the application from New Haven was made.

¹⁴ For the recital, see note, p. 71.

England. Some months afterwards answers were received from each of these parties, but they were evasive, and gave little satisfaction, and the New Haven colonists were obliged to await a more favorable opportunity for the pursuance of their claims in this particular case. But in 1646 they made a new acquisition, purchasing lands not far from the Hudson River, and erecting a fort; by this movement a long altercation was brought on, between Director Keift, and Eaton, the Governor of New Haven. The former declared "that we are forced again to protest and by these presents we do protest, against you as breakers of the peace, and disturbers of the public quiet," and he also threatened, that unless the New Haven people should restore the places they had taken, and repair the losses the Dutch had experienced, the latter people would manfully recover them by such means as were within their power, and would hold the English responsible for all the evils that should ensue. In his answer, Governor Eaton denied that he had entered upon lands to which the Dutch had any known title, he alluded to the injuries and outrages done to the people of New Haven, both at the Mannhattans and on the Delaware, and concluded with an offer to refer all difficulties between his people, and the Dutch, to the decision of any competent authority, either in America or in Europe. Not long afterwards the correspondence between these parties was laid before the Commissioners of the New England Colonies, at a meeting held at New Haven, and the matter at issue, together with other differences between the English, and the Dutch, became subjects of earnest attention. The Commissioners afterwards addressed a letter to Director Keift, mentioning the difficulties that had occurred on the Connecticut River, and also the recent proceedings of their confederates of New Haven, and expressed an opinion that the answer of Governor Eaton, was fair and just. The final reply of Director Keift was expressed in terms of far more vehemance, than strength, yet it seemed to proceed from a real conviction that there was justice in his claim.⁴⁵

But the administration of Director Keift was drawing to its

* O'Callaghan, p. 385

close. Strong complaints had been made against him, and transmitted to the Directors of the West India Company; he was charged not only with mismanagement, but also with the greatest abuse of his powers. It is certain that the course he pursued brought serious misfortunes upon the province. In the war with the Indians the population was reduced, and debt was incurred, and in consequence the colonists were subjected to numerous and heavy exactions. His own people became enfeebled, whilst the neighboring colonies were waxing in strength. The Governor was active, but his activity frequently ran into rashness, and his zeal was of a kind that often wore the appearance of passionate impulse.

Keift was removed from office in 1646, and in the following year departed from the province to return to Holland; but the ship with all on board were lost on the voyage.

CHAPTER VI.

NEW NETHERLAND, NEW SWEDEN, AND NEW ENGLAND.

PETER STUYVESANT was next appointed as Director in Chief in New Netherland. His commission was dated on the 26th of July, 1646, and included the province of New Netherland, and the Islands of Curacao, Bonaire and Aruba, on the Spanish Main. He arrived in the country in May, 1647. He had long been employed as a military officer in the service of Holland, and was reputed to be courageous, prudent and firm.

At an early period the new Director applied himself to a removal of the difficulties and dangers with which the province was surrounded, from the hostile dispositions of the Indians, and the doubtful attitude of the English, and the Swedes. He concluded a treaty of peace with the natives which continued unbroken during the whole of his administration.¹ But the differences with the English were not of a nature to be readily terminated; at this time, the principal matters in dispute related to the claims of New Haven and Connecticut, to the ownership, and exclusive possession of lands.

The New Haven people were not disposed to relinquish the claims they had advanced to lands upon the Delaware, and in 1649, Governor Eaton, on behalf of the colony, made a new application to the New England Commissioners. He proposed that effectual measures should be immediately adopted for securing the rights of New Haven, by taking possession of the territory in question, and planting colonies thereon. The Commissioners did not agree at the time, to engage in any attempt for the purpose proposed, but they recognized the rights of the people of New

Haven to lands on the Delaware, and left the owners at liberty to cultivate their interests therein, in such manner as they should deem proper.²

The Director of New Netherland did not fail to perceive that the aspect of affairs was threatening, and he endeavored to provide for the danger. Application was made to the West India Company, for the necessary authority and aid, but the corporation refused to give sanction to any measures of violence or force. "War," they said, "cannot in any event be to our advantage; the New England people are too powerful for us."³

Negotiation was therefore resorted to, and Stuyvesant himself, repaired to Hartford in order to effect an adjustment of the points in dispute. A conference with the Commissioners led to a resolve that Delegates should be appointed who were to represent the interests of their respective parties, and to devise some plan of agreement. After long discussions, articles of agreement were concluded upon by the delegates, on the 19th of September, 1650.

² Extract from the proceedings of an extraordinary meeting of the Commissioners for the United Colonies, held at Boston, July 23d., 1649.

From New Haven general court, it was propounded to the Commissioners what course might be taken for the speedy planting of Delaware Bay. The title some merchants at New Haven have by purchase from the Indians, to considerable tracts of lands on both sides of the river, was opened; and the Commissioners did read and consider what had passed at a former meeting of theirs, in Anno Domini 1643. A writing delivered into New Haven Court, by Mr. Leech, concerning the healthfulness of the place, the goodness of the land, conveniency of the lesser rivers, with the advantage of a well ordered trade there, was also perused. The Commissioners with the premisses considering the present state of the colonies, the English in most plantations already wanting hands to carry on their necessary occasions, thought fit not to send forth men to possess and plant Delaware, nor by any public act or consent, to encourage, or allow the planting thereof; and if any shall voluntarily go from any of the colonies to Delaware, and shall without leave and consent of New Haven, sit down upon any part or parts thereof, or in any other respect shall be injurious to them in their title and interests there, the colonies will neither protect nor own them therein. The New Haven merchants being notwithstanding left to their just liberty, to dispose, improve, or plant the land they have purchased in those parts or any part thereof as they shall see cause. Hazard's Register, vol. I., p. 17.

³ Bancroft's History, vol. 2., p. 295.

This agreement was in the nature of a provisional treaty, to be confirmed by the respective governments in Europe. It gave to the English the whole of the territory on the Connecticut River, except such portions as were actually possessed by the Dutch. Long Island was also divided between the two nations.⁴

In regard to the interests of the New Haven claimants, the agreement was quite indecisive; it left the matters in issue nearly in their original condition. It was stated that for the time, the parties were left at liberty to improve their interests for planting and trading as they should see cause.⁵

⁴ Frost's History, vol. 2., p. 47. Bancroft's History, vol. 2., p. 295.

⁵ Articles of agreement made and concluded at Hartford upon Connecticut, September 19th, 1650, betwixt the delegates of the honored Commissioners of the United English Colonies, and the delegates of Peter Stuyvesant, Governor General of New Netherland.

1. Upon serious consideration of the difference and grievances propounded by the two English colonies of Connecticut and New Haven, and the answer made by the honored Dutch Governor, Peter Stuyvesant, Esq. According to the trust and power committed unto us as Arbitrators or Delegates betwixt the said parties, we find that most of the offences or grievances were things done in the time and by the order and command of Monsieur William Keift, the former Governor, and that the present honored Governor, is not duly prepared to make answer to them; we therefore think meet to respite the full consideration and judgment concerning them, till the present Governor may acquaint the High and Mighty States and West India Company, with the particulars, that so due reparation may accordingly be made.

2. The Commissioners of New Haven complained of several high and hostile injuries which they and others of that jurisdiction have received from and by order of the aforesaid Monsieur Keift, in Delaware Bay and River, and in their return thence as by their former propositions and complaints may more fully appear; and beside the English right claimed by a patent, presented and showed several purchases they have made on both sides the River and Bay of Delaware of several large tracts of land unto and somewhat above the Dutch house or fort there, with a consideration given to the said Sachems and their companies, for the same acknowledged and cleared by the hands of the Indians, whom they affirmed were the true proprietors, testified by many witnesses; they also affirmed that according to their apprehensions, they have sustained £1000 damages, partly by the Swedish Governor but chiefly by order from Monsieur Keift, and therefore required due satisfaction and a peaceable possession of the aforesaid lands to enjoy and improve according to their just right. The Dutch Governor

Under these circumstances, the New Haven colony resolved that another attempt should be made to establish themselves upon their territory, and early on the following year a company departed for the Delaware. They had received a commission from Governor Eaton, who also wrote an amicable letter to the Governor of New Netherland, giving him information of the object in view, and also stating, that in accordance with the agreement at Hartford, the settlers would occupy their own lands, and give no disturbance to others. But Director Stuyvesant was resolved that no advantage should be drawn by his opponents from the treaty that had been made, and when the English presented themselves at the Manhattans, he immediately caused them to be arrested, and their vessel secured. He also compelled them to enter into an engagement not to proceed to the Delaware, and threatened, that if any English should be found there, they should be seized, and sent prisoners to Holland. The company were without the means of resistance, and were obliged to return to New Haven.

Directly upon their return, a petition was prepared and addressed to the Commissioners of the United Colonies, setting forth the injury that had been done by the Dutch, and asking that some course should be adopted, for defending the property and persons of the petitioners, and for maintaining "the honor of the English nation."

by way of answer, affirmed and asserted the right and title to Delaware or the South River, as they call it, and to the lands there as belonging to the High and Mighty States and the West India Company, and professed that he must protest against any other claim; but is not provided to make any such proofs as in such a treaty might be expected, nor had he commission to treat or conclude any thing therein; upon consideration whereof, we the said Arbitrators or Delegates wanting sufficient light to issue or determine any thing on the premises, are necessitated to leave both parties in *statu quo prius* to plead and improve their just interests at Delaware *for planting and trading* as they shall see cause; only we desire that all proceedings there as in other places, may be carried on in love and peace, till the right may be further considered and justly issued either in Europe or here, by the two States of England and Holland."

The agreement made by the colonies was never ratified. It was assented to by the Government of Holland, but was not confirmed in England.—*Bancroft?*

"To The Honored Commissioners for the United Colonies now assembled at
New Haven:

"The Honorable Petition of Jasper Graine, William Tuttill and many

After considering the matters presented in the petition, the Commissioners resolved, that a letter should be directed in their name, to the Director of New Netherland. In this communication they stated, that the conduct of Stuyvesant was regarded by all the colonies as directly contrary to the agreement he had made; that the New Haven settlers had only designed to improve their just rights, and that the terms of the treaty expressly allowed of planting and trading upon lands, as the parties might choose. They also demanded that satisfaction should be made to their friends and confederates, for the damage that had been done. But the Commissioners informed the people of New Haven, that they did not think meet at the time, to enter into any engagement against

other inhabitants of New Haven and Sotocket." After some preface the Petition proceeds, "and whereas your petitioners streightened in the respective plantations, and finding this part of the country full, or affording little encouragement to begin any new plantations for their own comfort and convenience of posterity, did upon a serious consideration of the premises and upon encouragement of the treaty between the honorable Commissioners and the Dutch Governor, the last year at Connecticut by agreement and with consent of the said merchants and others, resolve upon a more difficult remove to Delaware; hoping that our aims and endeavours would be acceptable to God and to his people in these colonies, being assured our title to the place was just; and resolving (through the help of God) in all our carriages and proceeding, to hold and maintain a neighborly correspondence both with the Dutch and Swedes, as was assured them both by the tenor of the Commissioners, and by letters of the honored Governor of this jurisdiction; to these ends, and with these purposes preparations were made, in the winter, a vessel was hired, and at least fifty of us set forward in the spring and expecting the fruit of that wholesome advice given at Hartford the last year in the case by the Manhattoes, which we might have avoided, and from our honored governor presented a letter to the Dutch Governor, upon perusal whereof, (without further provocation) he arrested the two messengers and committed them to a private house, prisoners under a guard, that done, he sent for the master of the vessel to come on shore to speak with him, and committed him also, after which two more of the company coming on shore and desiring to speak with their neighbors under restraint, he committed them as the rest, then desiring to see our commissions and copy them out, promising to return them the next day, though the copies were taken, and the commissions demanded, he refused to deliver them, and kept them, and the men imprisoned till they were forced to engage under their hands not to proceed on their voyage to the Delaware, but with loss of time and charge, to return to New Haven." &c.

the Dutch, choosing rather "to suffer affronts for a while than to seem to be too quick;" yet if the petitioners should think proper to attempt the improvement of their lands at any time within twelve months, and for that purpose, should, at their own charge transport together one hundred and fifty, or at least one hundred able men, armed in a proper manner, that in case they should meet with any opposition from the Dutch, or the Swedes, the Commissioners would assist them with such a number of men as should be thought meet.

But the Director of New Netherland stood firm to his purpose. He insisted that according to the terms of agreement, affairs were to remain in their former state, and that no improvement should be made which would change, in any respect, the rights of the claimants; and he declared in a letter to Governor Eaton, that he would resist, even to the last extremity, any attempt to settle or plant upon the lands in dispute.

The people of New Haven made various attempts to strengthen their interests, and to maintain their claims, they applied to their confederates both singly, and in union, but no decisive result was obtained; the opposition between New England, and New Netherland was constantly increasing in strength, but the period of crisis had not yet arrived.

The attention of Governor Stuyvesant was now directed to making provision for the vindication of the claims of the Dutch, against the demands and advances of the Swedes. The latter people continued to hold possession upon the Delaware; they had secured a great portion of the trade of the country, and had compelled the Dutch to submit to numerous indignities. But Stuyvesant was little disposed to passive submission, or further forbearance. By his direction, a tract of land was purchased from the Indians, in the name of the States General and the West India Company, lying between Christina Creek and Bompie's Hook, and by this movement an opportunity was given to the Dutch, to penetrate nearly to the heart of the Swedish settlements.⁷ Preparations were also made for erecting a fort.

⁷ This purchase was made on the 10th of July, 1654.

These vigorous proceedings gave much alarm to the Swedish authorities; and Governor Printz immediately protested against them; the lands, he said, were the property of the Swedes, by rightful purchase. But no more regard was paid to the Swedish protest, than a similar instrument had formerly received, from the Swedes themselves; the Dutch persisted in their course, and soon completed their fort; it was placed but a few miles from the primitive seat of Swedish authority. It was called Fort Casimer.

Governor Printz had sufficient discernment to perceive, that his authority would be wholly and quickly subverted, unless the movements of the Dutch could be checked; he therefore despatched some agents to Sweden, with orders that full information should be given to the government, of his perilous condition.⁸ But before the support he required, could be expected to arrive, the Governor, who was hasty and impatient, became wearied with delay, and resolved to depart from the province. He had formerly intimated a desire to relinquish the government, and his present departure was probably in pursuance of his previous design, yet the abandonment of his post at the present conjuncture, was not calculated to confirm the opinion which his superiors seem to have held, in favor of his character and conduct. He had rendered himself unpopular in the province by his rigorous exercise of power. He departed in 1653, and deputed his authority to his son-in-law, John Pappegoia.⁹

In the mean time, before it was known in Sweden, that Printz had surrendered the government, measures were adopted for the relief of the province, and an assistant to the Governor appointed. The individual who was chosen for this situation was John Rysing.¹⁰ He received his commission in 1653, and ample in-

⁸ Ferris' Settlements, p. 79.

⁹ Clay's Annals, p. 25.

¹⁰ *Upsal*, Dec. 12th, 1653.

¹¹ We Christina, &c. make known that having elected our very faithful subject John Rysing, formerly Secretary of the General College of Commerce, to make a voyage to New Sweden, in order there to aid for a certain period our present Governor of the said country, agreeably to the orders and instructions which he has received from the said College, and being willing that in consequence of the hazard and fatigue he will experience during so long a voyage—

structions were also given, directing the course to be pursued by the government.

The Governor was directed to be careful that the South River should be fortified, protected and defended, as far as practicable. He was to extend the limits of the country, if this could be done with prudence and propriety, without hostility, or any risk to what was already possessed. With respect to the fortress that the Dutch had built upon the coast, (Fort Casimer,) if he could not induce them to abandon it by argument, and serious remonstrances, and without resorting to hostilities, he should avoid the latter, and confine himself solely to protestations; suffering the Dutch to occupy the fortress, rather than it should fall into the hands of the English, who it was said were more powerful, and therefore more to be dreaded in the country. But it would be proper to construct a fortress nearer the mouth of the river, below that of the Dutch, in order to defend the passage, and render theirs useless. But the mildest measures only, were to be employed.

To encourage the cultivation of land in New Sweden, her Majesty resolved and ordained, and the Governor on the part of her Majesty, was to give assurance, that all who should wish to purchase either from the company, or the savages, as her subjects, recognizing the jurisdiction of the Crown of Sweden, should enjoy in respect to the lands thus purchased, all franchises and allodial privileges, both themselves and their descendants, forever; being assured that they should be admitted into the company, or otherwise secured in the franchises aforesaid. Nevertheless, no one should enter into possession of land without the sanction of the Governor, in order that no one should be deprived improperly, of what he already possessed.

that his pay and support be there rendered therein, we command that the sieur John Rysing, in virtue of this letter patent, and in the capacity of Commissary of the said General College of Commerce, shall receive annually the sum of Twelve Hundred Dollars in silver, in addition to the special appointments which he may receive from the Company of the South." Rysing also received the sum of One Hundred Rix Dollars for his equipment and voyage.

Hazard's Register.

Some changes were also made in the Constitution of the Government. The military, was separated from the civil department, and provision was made for a permanent Council, to act with the Governor.

It was ordered, that before the present Governor should leave the country, he should render to the Commissary Rysing, an exact account of all the affairs of justice and police, and of the revenues of the company, and all similar matters. That he should in the mean time, and until new orders were received, resign into the hands of John Amundson, (who went out at the same time with Rysing,) all that relates to the military, and to the defence of the country; establishing also a Council formed of the best instructed and most noble officers in the country, of which Rysing should be Director, in such manner however, that neither he in his charge, or John Amundson, as governor of militia, in his, should decide or approve any thing without reciprocally consulting each other. The Governor, in case of his leaving the country, should give written instructions to the subordinate officers, in order, that the government might be duly administered. But if the Governor should remain longer in the province, he should accept as Commissary, and Assistant Counsellor, the aforesaid John Rysing, and for the Council those whom he should judge the most proper; and that all affairs should be decided after due deliberation, and with unanimous agreement.

Upon the arrival of Rysing, it was found that the Governor had already departed, and had left authority in the hands of Pappegoia. The latter was superseded upon the arrival of Rysing, and after remaining for a time in a subordinate situation, departed from the province.

Rysing, who was now the principal in command, assumed the title of Governor, or Director General, and with it, a degree of authority not warranted by the instructions that had been given. The direction of military affairs, and all that related thereto, had been expressly assigned to another individual, but Rysing retained the entire control; he also proceeded to exercise his powers in a prohibited case. The instructions he had brought to the province directly forbade that any hostile attempt should be made to effect the removal of the Dutch, from their fort on the coast. But Rysing

resolved upon a different course, and an attack upon Fort Casimer was one of his earliest acts.¹¹ He landed a company of thirty men, advanced to the fort, and gaining admittance either by falsehood or force, demanded an immediate surrender.¹² The Commander was not in possession of the means of resistance, and was compelled to yield up the post; all persons in the fort were allowed to depart, but if any should choose to remain, they were promised that full protection should be given them, upon taking an oath of allegiance to the Crown of Sweden. The reduction of Fort Casimer having been effected on Trinity Sunday, the captors gave to the works the name of Trinity Fort.

After this conquest, Commander Rysing applied himself to strengthen and secure the Swedish authority, in the province. Fort Casimer, or Trinity Fort, was rebuilt and extended, and measures were adopted for placing the people in friendly relations with the Indian tribes. To these transactions a period of calm succeeded, which some historians have interpreted as a proof, that an agreement had been entered into between the Dutch, and the Swedes, in which the several matters in dispute were fully adjusted.¹³ But the calm was only the precursor of storm.

The Governor of New Netherland had been deeply moved by the injury which he conceived to have been done, in the attack upon Fort Casimer, and he only awaited the reception of the proper authority, and the completion of the needful preparations,

¹¹ Aerelius and other authorities represent, that the attack on Fort Casimer was made by Rysing at his first appearance in the Delaware. But then, he could not have been ignorant of the tenor of the instructions that had been given, and if such a step was ventured upon before he had become properly invested with authority, or had entered upon office, the act was only the more imprudent and improper.

¹² By some it is said, that the place was taken by storm, others assert, by stratagem.

¹³ Campanius says that the differences between Rysing and Stuyvesant in the year 1654, appear to have been amicably settled; and this view is also adopted by Clay, who remarks in reference to subsequent movements, "that there seems to have been a want of good faith, or at least the practice of some deception, on the part of the Dutch." Nothing is known to warrant the imputation of treachery, except the *apparent* quietude of the Dutch.

to make a decisive vindication of his claims. Hostilities were not to be entered upon without the assent of his superiors, but this assent was readily gained, the West India Company transmitted an order directing the Governor to "revenge their wrong, to drive the Swedes from the river, or compel their submission."¹⁴ Stuyvesant prepared to obey the direction; he collected a force of seven vessels, with more than six hundred men, and assuming the command in person, departed for the Delaware. In September, 1655, the squadron arrived, and the Commander directly presented himself before Trinity Fort, and demanded a surrender. Resistance against such a force would have been fruitless, and honorable terms of capitulation were granted. Not long afterwards Christina fell in a similar manner.¹⁵

The Island of Tennekong was next approached, and Gottenberg the fort, with the Governor's residence, and all the improvements on the Island, fell into the hands of the conquerors. New Sweden was completely subjugated, and the change of condition that followed, was quietly submitted to. No measures of active resistance are known to have been taken, either in the province itself, or by the government of Sweden, excepting only the publication of a protest, in the following year, by the Swedish Ambassador at the Hague.¹⁶ But this declaration was productive of no effect. The province was lost.

¹⁴ Bancroft, vol. 2, p. 297.

¹⁵ For the terms of surrender, see Acrelius. They are also given in full in Ferris's Settlements, p. 94.

¹⁶ [Protest.] "The underwritten resident of Sweden doth find himself obliged by express order, to declare unto their High and Mighty Lordships herewith, how that the Commissioners of the West India Company of this country in the New Netherlands, now the last summer did unexpectedly assault by force of arms the Swedish colony there, taking from them their forts, and drove away the inhabitants, and wholly dispossessed the Swedish Company of their district. It is true and without dispute, that the Swedish Company did acquire *optimo titulo juris* that part which they possessed, and did buy it of the natives, and consequently had possession of it for several years; without that the West India Company of these countries did ever pretend any thing. Wherefore the said resident doth not doubt but these hostilities will very much displease their High and Mighty Lordships, and doth desire in the name of his most Gracious King

The attempt of the Swedish Government to settle their people before any assurance had been gained of a right to the territory they entered upon, was hazardous and unwise. If some feeble attempts at negotiation had been made with the previous claimants, there is nothing to show that any positive agreements were ever concluded with them; no such agreements were afterwards urged; the Swedes defended their claims entirely upon the ground of the native right; even in their last protestation, they set forth their title as being derived "*optimo titulo juris*," a purchase from the natives. But this had never been acknowledged by European nations as giving a sufficient right, and in the present case, it had also passed, to a great extent, into other hands.

Beside their first and principal error, the conduct of the colonial authorities was not such as was favorable to a quiet establishment in the country. Minuet treated the protest of the Dutch with utter disdain; Printz was imperious and provoking, and Rysing, in the face of positive instructions to the contrary, entered upon a course of actual hostilities. As has been well remarked, New Sweden took the sword, and it perished with the sword.¹⁷

Arrangements were immediately made by Director Stuyvesant for the government of New Sweden. Before his departure from the Delaware, he placed a Commissary in temporary command, but on his return to New Amsterdam, he gave a commission to John Paul Jacquet to be Governor; he was instructed to take care of trade, and keep order among the people. He chose Fort Casimer for his residence, and Andrias Hudde, the former Commissary at Fort Nassau, was appointed his Counsellor.¹⁸

During these proceedings on the Delaware, events had occurred in another direction which now required the attention of the Director of New Netherland. It has been seen that the provi-

nd Lord, that their High and Mighty Lordships would be pleased to take some speedy order for the redressing of such unlawful proceedings, as the justice, the mutual amity between both nations, and the consequence of the business require, and is expected from their high wisdoms, whereby the Swedish Company may be restored undemnified.

H. APPLEBOOM.

"Done at the Hague the 22d March, 1656, (N. S.)"

¹⁷ Ferris's Settlements.

¹⁸ Acrelius.

sional treaty which was concluded in 1650, between the English and the Dutch, had failed as a measure of peace; indeed it had proved, in regard to some of the colonists, an occasion of increased offence. And besides the causes of disunion which that agreement was designed to remove, there were others of a different character, and entirely beyond its scope. The two nations were not only adverse in interest, but were also totally unlike in their institutions and character, and dispositions unfavorable to harmony, if not actually cherished, were yet rapidly increasing in strength. Their European connexions also had become unsettled, and in 1652 open hostilities broke out between England and Holland, a circumstance which could hardly fail to give greater intenseness to the feelings of the colonists. Beside this, a rumor became prevalent that the Dutch had engaged in a plot with the Indians in all parts of the country, for the purpose of destroying the entire population of New England. The intelligence of the agreement was derived from the Indians themselves, and under the circumstances of the time, when much irritation already existed, the rumor was readily credited. It was also supposed to be strengthened by an additional circumstance. The Governor of New Netherland directed a letter to the several colonies of New England, proposing that neutrality should be observed between them and the Dutch, during the continuance of the war in Europe, unless positive orders to the contrary, should be given. This proposal was regarded as an evidence of treachery, rather than as showing a desire for peace. Alarm was excited among the English settlers, and a special meeting of the United Colonies was called, which accordingly convened at Boston, in May, 1653.

After examining the evidence in regard to the designs of the Dutch, a majority of the Commissioners declared themselves in favor of war. But Massachusetts, the strongest, but most remote of the colonies, either in the exercise of a sounder judgment, or from a feeling of greater security against the menaced attack, refused to resort to hostile proceedings. At the suggestion of her deputies, a person was despatched to the Governor of New Netherland, to demand from him an explanation of his conduct and course.

Upon the reception of the messenger, Stuyvesant expressed

himself in relation to his errand, and the charge that was made, in terms of the greatest indignation and warmth. He asserted his innocence and rectitude; he had sought, he said, nothing but peace and good neighborhood, yet if he must be driven to extremities, he had confidence that a just God would enable him to stand, in making a righteous defence. His reply was reported at a second meeting of the Commissioners of the Colonies, and was declared to be evasive, and not satisfactory. The majority again resolved upon war, but the deputies from Massachusetts persisted in dissent, and the general court of that colony upheld their representatives, and even went farther. It was resolved, that no determination of the Commissioners, though all should agree, should bind the colony to engage in hostilities.

Disappointed of the aid they expected to receive from their principal confederate, the remaining colonies were prevented from the prosecution of their purpose.

But Connecticut and New Haven resolved upon seeking assistance in a different quarter. Cromwell, who had acquired the principal control of affairs in England, was actively engaged at the time, in urging hostilities with Holland, and to him application was made.¹⁹ Falling in with his present designs, the application

¹⁹ [*Extract from the letter of William Hooke to Lord General Cromwell.*]

"The bearer hereof, Captain Astwood, a man very desirable and useful amongst us, can acquaint your Lordship with our affairs, and the tottering state of things in these ends of the earth, where the lines are fallen to us, concerning which I have written to you in a letter dated, I suppose, about a month before this, which I hope will come to you. Briefly, whereas our Four Colonies, The Bay, Plymouth, Connecticut, and New Haven have stood combined by a solemn agreement, for which many prayers were put up to Heaven, and many thanks returned to God, when it was effected, and which hath continued inviolate for the space of ten years to the terror of our enemies, whether Dutch or Indians; it is so, that the late treaty of the Commissioners for the aforesaid colonies, (of whom this bearer was one,) concerning the undertaking of a war against the Dutch, hath after several agitations and discussions of the point, occasioned the Bay to desert us, (a colony near equal in greatness to the other three,) and to break the brotherly covenant, refusing to join in a military expedition against the Dutch, and lately against the Indians also, from whom we have received much injury and contempt. The truth is, the decliners fear their own swords more than the Dutch or natives, or the displeasure of the State of England, concerning that if the sword be once drawn it will bear rule no less in our

was favorably received, and a squadron was sent over to aid and support the colonists, and instructions were given to the commander to address himself to the Governors of the several colonies, and request their concurrence.

But a peace was soon afterwards concluded between the belligerents in Europe, information of which was received in New

England than in yours, and so the magistrates in the general court in the Bay, fear that they shall bear the sword in vain. In the mean time we are like to feel the sad effects thereof, for great discontents are risen in the minds of many, who are willing to shake off all yokes, and utterly averse to pay the vast charge of the late long fruitless Commissioners. A language of mutiny and sedition, and of renouncing the present authority, is heard amongst us, whereby we are endangered as well from within as from without our selves, and great fractures and disjunctures are threatened, and the great changes hastening upon us whereof Mr. Cotton spoke on his death bed, upon occasions of the comet, which shined many nights during his sickness, and extinguished about the time of his dissolution. Trade is obstructed, commodities (especially clothing,) very scanty, great discouragements upon the most if not all. It is strongly apprehended by the intelligent among us, that our cure is desperate if the Dutch be not removed, who lye close upon our frontiers, so that we and our posterity (now almost prepared to swarm forth plenteously) are confined and strengthened, the sea lying before us, and a rude rocky desert unfit for culture, behind our backs. Our danger also from the natives is great, to whom these ill neighbors have traded and still do, multitudes of guns, with powder, shot, and weapons which the English have always refused to do, and by means of this damnable trade, (as the Dutch Governor himself calls it,) this earthly generation of men, whose gain is their God, are grown very gracious to the barbarians and have them at command as an armed people, prepared (if we enterprize ought against the Dutch) to assault the English. But I am unwilling to detain your Lordship any longer with my lines, the Captain knoweth how to supply my defects, and is indeed a fit man to be employed in service against the Dutch, if we come not too late, and if also your Lordship would be pleased to procure two or three frigates, to be sent for the clearing of the coast from a nation, with which the English cannot either mingle or easily sit under their government, nor so much as live by, without danger of our lives and our comforts in this world. And if these men might be dislodged, it would contribute much to the cure of our intestine discontents, which arise principally from our not enterprizing against these earthly minded men. Yet if withal, your Lordship, by your letters, or the parliamentary power interposing by their authority, or both, shall command quietness among ourselves and subjection in the people to the highest powers throughout the several colonies, and also command assistance to be afforded by the Bay to the other three colonies, in case of war against the Dutch, it may please the Lord to heal our breaches and prevent distempers, and to cause us

England soon after the arrival of the fleet, which was thereupon recalled. In consequence, the designs of the English against New Netherland, were once more suspended.

In the treaty concluded at this time, there was no express stipulation in reference to the colonial possessions belonging to the parties; it only provided in general terms for the restoration of peace throughout the dominions of each. But the withdrawal of the armament that had been sent by Cromwell against New Netherland, seemed to imply a concession, not only in favor of the claims of the Dutch to the country, but also, that these countries were included on the terms of the treaty.

But the English colonists denied the inference; they insisted that in fact, the Dutch were not the owners of land in America, that they were merely intruders, and of consequence could derive no claim to forbearance from the terms of the treaty. Even if the treaty they said, extended to all the countries belonging to the parties throughout the world, (a point which was not conceded,) it still could have no effect in the case in question, because the country of New Netherland did not belong to its present possessors.²⁰ With these views the colonists resolved to pursue their

to live again, wherein you shall do a singular service to many churches of Christ, and be (through grace) an instrument in God's hand, of effecting great things in these four colonies, as God hath used you to accomplish great matters in three kingdoms, &c.

Your Lordship's in most observance,

"WILLIAM HOOKE.

"To His Excellency OLIVER CROMWELL,

"Lord General of all the forces of the Commonwealth of England.

"New Haven, the 3d of November, 1653."

Thurloe's State Papers.

²⁰ At an early period of the colonies it had been understood that they were not bound by a *statute* unless they were specially named; whether the case was the same with a treaty is uncertain. But the entire course of the colonies at this time was such as to evince but little dependence upon the parent country. They had not considered themselves involved in the war in Europe, only as they became so by their own acts. They had themselves declared war against the Dutch, without any authority from England, and had only applied to that country for aid, though *afterwards* an order had been received from Parliament requiring that the Dutch should be treated in all respects as the enemies of England. Under these circumstances the treaty in Europe might not be regarded as conclusive, as to the separate action that had been commenced or

designs in relation to the Dutch. Application was again made to the English government, and Richard Cromwell, the Second Protector, manifested a willingness to accede to the wishes of the applicants. He issued orders to prepare a squadron, and gave instructions to the commanders for an invasion of New Netherland; he also caused letters to be written to the provincial assemblies, desiring their co-operation in the proposed attempt.²¹ But the reins of authority soon fell from the grasp of the feeble Richard, and his designs and directions were not carried on to completion. A further respite was secured to New Netherland.

But the resolves and claims of the English continued the same, or rather seemed constantly to rise; the colonists no longer confined their views to the recovery or defence of a particular portion of territory, but looked to an entire subjugation of the Dutch, and the possession of the whole of the country they occupied or claimed. The people of New Haven openly declared that no New Netherland was known to them, that they considered the possession of the West India Company entirely unlawful, as not supported by a grant from the King of England, and therefore that they were resolved to extend their plantations as far as they pleased.

Whilst New England was thus advancing on the one hand, the Governor of New Netherland retained with difficulty the hold he had lately obtained, on the other. New Sweden seemed ready to pass from his grasp.

The Dutch had rejoiced in the establishment of their power upon the borders of the Delaware, and had counted upon a firm and peaceful possession. The West India Company shared the government of the country with the principal city of Holland, and officers representing their authority were placed in the respective divisions.²² The rule of these persons was rigorous. Stuyvesant

contemplated in the colonies. Such was the position taken by the colonists, and thus, in addition to the claim which they urged to the country held by the Dutch, was considered as sufficient to warrant the prosecution of hostilities, notwithstanding the conclusion of the peace in Europe.

²¹ Thurloe's Collections.

²² The country on the western side of the Delaware was divided by the Dutch into two colonies. One extended from Fort Christina to Bambo-Hook, and was

was jealous of the Swedes, and ordered his deputy in the colony of the company to "keep a watchful eye upon them, and if any should be found seditious, to send them to Manhattan!" He afterwards transmitted an order that they should all be collected into small towns, where their movements might be easily observed, and easily controlled. To escape from this merciless rule, a number of the settlers departed from the colony, some of them going to the adjacent province belonging to Amsterdam city. But here their condition was little improved; "when did a city ever govern a province with forbearance." The most onerous commercial restrictions were here established, and the prosperity and happiness of a people, and the advancement of a country, were considered of less importance than a profitable trade. But in a part, and an important part of the country, a different claim existed, by which, both the profits and the powers of the present possessors, were brought into jeopardy. Nearly the whole of the settlements on the western side of the Delaware, were included in the territory which, many years before, had been granted to Lord Baltimore, and was included in the province of Maryland. And the authorities of Maryland were alive to their interests.

In 1654, Ffendall, the Lieutenant of Lord Baltimore, gave instructions to Colonel Nathaniel Utie to repair to "the pretended government and people" seated on Delaware Bay, within his province, and to require them to depart; but he might propose to the people there seated, to place themselves under his Lordships government, where they should find good conditions, and be protected in their lives, liberties and estate. Utie repaired to the country accordingly, and a warm discussion ensued between him and Beekman, and Alrich, who acted on behalf of the Dutch. The latter officers proposed, that the matters in dispute should be

called the Colony of the Company. The other extended from Christina up the Delaware, to the extent of the settlement, and was called the Colony of the City. In the former of these, Jacquet was first appointed as Governor. He was succeeded by William Beekman. In the other colony, after Jacquet, (who exercised authority for a time in both,) Jacob Alrich was appointed, who continued in office till his death, and left as his successor, Alexander Hinoyosa. On the 7th of February, 1663, the company ceded all its rights to the Colony of the City, and after that time, Hinoyosa was Governor of the united colonies.—*See Aerelius.*

referred for decision to the republics of England and Holland. Soon afterwards the Director of New Netherland became a party in the controversy; he sent a commission to Maryland, with orders to wait on Ffendall, and to place before him a statement of their claims. The Commissioners were to represent, that the Dutch had an indisputable right to the country, as could be proved and shown by the patent from the Lords States General, and the West India Company, and by bills of sale and conveyance from the natives, and the possession of more than forty years. But the embassy was not successful. Ffendall was brief in his reply; he admitted the facts as set forth, but maintained that they were utterly valueless.

In the following year Lord Baltimore again presented his claims; through his agents in Holland, he demanded of the authorities in that country, that orders should be given to the colonists on the Delaware, to submit to his Lordships rule. The demand was refused in a peremptory manner, and the West India Company transmitted an order to their officers, not to give up the country, but to defend it, even to the spilling of blood.²³ But the spilling of blood at this time was averted. Maryland was either unprepared to resort to such an extremity, or was willing to await the course of events which seemed rapidly tending to an issue, favorable to her wishes and views.

The authorities of New Netherland were still less inclined to measures of violence. Stuyvesant was well disposed to assert his authority, but the existence of the English on the south, and their continual encroachments on the north, gave sufficient warnings of

²³ The statement here given as to the tenor of the orders sent by the West India Company, is not in accordance with several authorities. Chalmers, and those who have followed him, declare, that the company gave directions to the colonial officers to withdraw to the northward of Lord Baltimore's boundary, and that the country in question being thus given up by the Dutch, was immediately occupied by Charles Calvert, the son of the proprietary of Maryland. But the statement of the text is founded on the original despatch of the West India Company, existing in the Albany Records. If the account of Chalmers is admitted, the conclusion must be drawn, that the formal despatches of the company, were contravened or annulled, by some private communication, and in fact, it is stated by some, that the instructions were "private." See Bancroft, vol. 2, p. 309.

danger, and of the necessity of caution in his course. New England had become greatly superior to New Netherland, in numbers and in strength, and the dispositions of her people were entirely manifest. Stuyvesant was aware of his position, and gave full information to his superiors of the state of affairs, and urged the adoption of the means of defence. He informed the States General and the West India Company, that "the demands, encroachments and usurpations of the English, gave the people here the greatest concern." In 1660 he wrote, "your honors imagine that the troubles in England will prevent any attempt on these parts, alas, they are as ten to one in number to us, and are able to deprive us of the country when they please."

At the same time that the storm was gathering upon New Netherland from without, its internal condition was not favorable to vigorous exertion for its own protection. Where there is no popular freedom, the government can have little hold upon popular affection: a people will not be easily aroused in defence of institutions which no experience of advantage has taught them to value.

The government of New Netherland had continued nearly the same from the time of its erection: except the special institutions which had been established under the Charter of Liberties and Exemptions, but little alteration had been made, and through the latter instrument, no security for popular rights had been offered or obtained. Under the general control of the West India Company the government continued to be administered by the Director General and Council. They made laws, appointed officers, and decided all controversies. The changes that had occurred with the increase of population, and the extension of interests, were attended with no corresponding advances in the provisions relating to civil and political rights.

At different periods attempts had been made by the settlers to obtain some melioration of their state. They became imbued to an extent with the views which were introduced by the emigrants from the neighboring colonies: the idea of popular freedom was transplanted from New England, to New Netherland. Many English had settled at Manhattan and other places in the province, and were indulged in the exercise of some of the privileges and powers, they had elsewhere enjoyed. The example was not with-

out effect. In the year 1653, a convention was held at New Amsterdam, composed of delegates from several of the towns in the province, with authority to make a representation setting forth the wishes and will of the people. They demanded that no new laws should be enacted but with the consent of the people, that none should be appointed to office, but with the approbation of the people, and that obscure and obsolete laws should not be revived. But Governor Stuyvesant was tenacious of power, and had little faith in the "wavering multitude." He issued a declaration in which the demands of the popular delegates were treated with little respect, and the reply which they made, was noticed in no other way, than by the issue of a positive command dissolving the convention, and threatening the members with arbitrary punishment. "We derive our authority," said the Governor, "from God and the West India Company, and not from the pleasure of a few ignorant subjects." The West India Company approved of the course of the Governor. "Have no regard to the will of the people," they said, "let them indulge no longer the visionary dream that taxes can be imposed only with their consent." But to dissipate such a dream was no easy undertaking, and the attempt could only tend, as it did tend, to detach the people of New Netherland from their government, and reconcile them to the idea "of obtaining English liberties by submitting to English jurisdiction."²

* Bancroft, vol. 2, p. 308.

CHAPTER VII.

SUBJUGATION OF NEW NETHERLAND, AND A SECOND CONVEYANCE OF A PART OF THE COUNTRY.

IN the year 1660, Charles the Second recovered the Throne of his Fathers. Circumstances occurred at an early period which tended to disturb the relations of amity which for some time had subsisted between England and Holland. Charles was displeased with the refusal of the States General to elect the young Prince, his nephew, as Stadtholder. The court of France was busy in fomenting the growing aversion. The French were jealous of the increasing intimacy between the countries of Spain and Holland, and endeavoured to prejudice the interests of the latter, by fanning the displeasure of the English King. The feelings of Charles were also strengthened by reasons of State. England and Holland were rivals in trade, and in the pursuit of their interests were sometimes placed in direct opposition. This subject was noticed by the House of Commons, and a vote was passed that the indignities offered to the English, by the States, were the greatest obstructions to foreign trade.¹ The condition of affairs in America was an additional ground of dissension; the claims of the colonists in New England, and those of the Dutch in New Netherland, were directly at variance, and an actual collision between the parties, was constantly threatened. The concurrence of these several circumstances and reasons seemed to the English King to point out a course of procedure which he directly prepared to pursue; he resolved to make an attack upon the Dutch by asserting his claim to their American possessions.

By this course of policy, the appearance of any new issue be-

¹ Robinson's England.

tween the parties was wholly avoided: the English had never conceded the claims of the Dutch in New Netherland, but on the contrary, had constantly maintained that the country was theirs, and that the actual occupants were only intruders who might at any time be expelled from the lands, or brought in subjection to the rightful owners. Whether the King was more influenced by such a view of the case, in his present attempt, or by a desire to strike a blow at a nation he disliked, is a matter which it may not be easy, and which at this time, it is not important, to determine. The first act toward the completion of the purpose in view, was the execution of a grant conveying the country in question, to his Royal Highness James the Duke of York and Albany, the brother of the King.

This grant was made on the 12th of March, 1663-4, it gave the lands lying between the western side of Connecticut River, and the eastern side of Delaware Bay, including Long Island, Nantucket, Marthas Vineyard, and the Islands in their vicinity.² It also conferred upon the Duke the powers of government, both civil and military, within the boundaries mentioned. Orders were directly given for the preparation of an armament to be despatched to America, in order to put the Duke in possession of his new domain. As a collateral object, it was also proposed, that a visit should be paid to the New England colonies. These colonies were not in such a condition in regard to the parent State, as was suited to the views of the King, and the attempt to subjugate the adjacent province held by the Dutch, was supposed to afford an opportunity for a general adjustment of the affairs of the country. To carry out this purpose, a body of Commissioners was appointed to attend the expedition.

A rumour of the meditated movement was soon borne to America. Governor Stuyvesant was informed that a squadron had been collected and was lying in Portsmouth, which was believed to be destined to New Netherland, and would shortly set sail. Information of similar import was received in New England, and also, that a commission had been appointed to investigate the state of the colonies, and to settle and determine the policy of the

² *Whitcher's History of East Jersey*, p. 23.

country. The visit of the officers of the King to his English subjects, was far more dreaded than desired. It was apprehended that the feelings entertained by the Sovereign toward the Puritan sectaries were not of the most favorable kind, and it was possible that he might still be disposed to look upon the country, as the asylum of the regicides. The event was quietly awaited.

In New Netherland little was attempted, and nothing could be effected to ward off the danger. Stuyvesant proposed that an enlistment should be made "of every third man, as had more than once been done in the Fatherland;" but the people were little inclined to enter the lists. But the state of feeling in the English colonies in regard to the expected visit, soon became known in the neighboring province, and the knowledge excited a glimmering hope in the mind of Stuyvesant; he conceived the idea that an union might be formed with his ancient opponents, or at least, that they might be prevailed upon to observe neutrality. To secure this object, he made a voyage to Boston, and was received by Endicott, the Governor of Massachusetts, with entire civility, and even with an appearance of respect.³

But whatever were the doubts or fears of the English in regard to the dispositions of their Sovereign toward themselves, they were not inclined to enter into any agreement which might favor the Dutch. The proposals of Stuyvesant were rejected both in Massachusetts and Connecticut, and he returned from his fruitless visit only in time to meet the invasion of the province of New Netherland.

The squadron despatched to America for the purpose already mentioned, was under the command of Sir Robert Carre, but the military forces were commanded by Colonel Nicholls, who was also to have command in the country to be reduced, and these two officers, with George Cartwright and Samuel Maverick, were the Commissioners to the colonies.

Upon the arrival of the fleet at Boston, the Commissioners exhibited their credentials, and also produced instructions to the colonists requiring that assistance should be given for the reduction of New Netherland. This requisition was presented to Endicott,

³ Grahames' Colonial History, vol. 2, p. 179.

the Governor of Massachusetts, who replied, that he had no authority to order a military levy without the consent of the general court, and the Commissioners were not inclined to await so tardy a movement. They therefore departed, leaving an order for the forces to follow.⁴

The application of the Commissioners in Connecticut, was met with a greater degree of alacrity; Governor Winthrop, with a number of volunteers, immediately joined themselves to the armament, and proceeded in the enterprise. The squadron, which consisted of four ships, appeared before the principal city of New Netherland, in August, 1664. Director Stuyvesant was sufficiently apprized of the designs of the English, yet, as no formal declaration of war had been made, the way seemed open for a mission of inquiry, which it was probably hoped might lead at least, to favorable negotiation. Accordingly, a deputation was sent to the English Commander, by which the Governor requested "with all respect and civility," that he might be informed concerning the meaning and intent of the approach of the ships, and their continuance in the harbor, which it was said, "hath caused admiration in us, not having received any timely knowledge of the same." Colonel Nicholls returned an answer equally courteous in form, but decisive in import. He informed the Governor and Council that his Majesty of Great Britain, having an unquestionable right and title to this part of America, and well knowing how much it would derogate from his crown and dignity, to suffer any foreigners to usurp dominion, and inhabit there; had given commandment to require a surrender of such forts or places of strength as were in possession of the Dutch. He accordingly demanded that the town known by the name of "Manhatoes," with all the forts belonging thereto, should be surrendered into his hands, and declared that every man who should submit, should be secure of life, liberty, and estate, but that all who should make opposition, would bring upon themselves the calamities of war. Governor Winthrop, who was known to the Governor and people of New Netherland, also

⁴ A regiment of two hundred men was afterwards raised and equipped under the direction of the general court, and preparations were in progress for their departure, when information was received of the fall of New Amsterdam.

wrote a communication urging the acceptance of the offered terms. Stuyvesant summoned his council and invited the burgomasters of the city to attend the conference; he represented to them that outrage and violence were designed by the English, and urged that measures of resistance should at once be adopted. But the members of the conference were disposed to mingle prudence with their patriotism. They wished to become informed respecting the terms that had been proposed by the English, and requested that they might be allowed to examine the letters received by the Governor. Stuyvesant was indignant at the idea of entering into any consideration of terms; he insisted that there was no other question to be debated, than as to the means of repelling the invasion. But this was not the prevailing sentiment, and the burgomasters and principal inhabitants protested against the course of the Governor, in refusing to make known the terms that were offered. In fact, the people were not inclined to active resistance. They had not been satisfied with the course of their own authorities, and a powerful force which they had not the means of opposing, was now at their doors. The English too, had issued a proclamation setting forth to the colonists that all who would submit to his Majesty's government, should be protected "in his Majesty's laws and justice, and peaceably enjoy whatsoever God's blessing and their own industry, had furnished them with." For a period Stuyvesant endeavored to stem the current alone; he remonstrated against the supineness of his own people, and opposed the demands of the English by exhibiting proofs of a right to the country. But all was unavailing, and finally, to preserve at least the appearance of order, and prevent the occurrence of violence and misrule, he consented to a capitulation. The conditions were concluded by Commissioners appointed by the parties.⁵

The articles of treaty agreed upon, were afterwards submitted to Nicholls and Stuyvesant, and were approved and signed by them. The treaty bore date the 27th of August, 1664.

⁵ The Commissioners on the part of the English were Sir Robert Carre, Colonel George Cartwright, John Winthrop, Samuel Willison, Thomas Clarke, and John Pinchon. On behalf of the Dutch, were John De Decker, Nicholas Varlett, Samuel Megapolensis, Cornelius Steenwick, Stephen Van Courtland, and James Coussea.

The provisions were most favorable to the Dutch. It was agreed that the States General, or the West India Company should freely enjoy all farms and houses, except such as were in the forts, and should have liberty for six months to remove all arms and ammunition belonging to them, or else they should be paid for them. That all people should continue free denizens, and enjoy their lands, houses, goods, and ships, wheresoever they were, and dispose of them, as they should think proper. Any inhabitant wishing to remove, should have a year and six weeks from that date to remove his family, and dispose of his lands. All persons might freely come from the Netherlands and plant in the country, and Dutch vessels might freely come to the country, and any of the people return home. The Dutch should enjoy full liberty of conscience in Divine worship, and the Dutch discipline. No Dutchman or Dutch ship should be pressed to serve in any war. The people were to enjoy their own customs concerning property, and all public writings and records were to remain undisturbed, and such writings as concerned the States General might be sent to them. No legal process should be interrupted, or called in question. All inferior civil officers might continue in office if they chose, until the customary time of new elections, but new officers should take the oath of allegiance to his Majesty of England.

Military officers and soldiers were to be allowed to depart with their arms and colours, and if any of them would remain as settlers, they should have fifty acres of land assigned to them.

These conditions, with others, formed as favorable an agreement as was ever granted to any people, in a similar case.

The satisfaction of the colonists was the natural effect of this liberal arrangement; but few availed themselves of the privileges allowing them to depart from the country; even *Suivycesant* himself remained, and continued in the province the remainder of his days.

The capitulation of New York was soon afterwards followed by the surrender of other places; Colonel *Nicholls* advanced to the vicinity of Fort Orange, which submitted without resistance, and measures were directly adopted for taking possession of the country upon the Delaware. For the latter purpose special authority was given by the Commissioners to one of their associates,

Sir Robert Carre.⁶ He was also furnished with particular instructions for directing the enterprize. He was to summons the Governor and inhabitants to yield obedience to his Majesty as the rightful Sovereign of that tract of land, and to inform them that all planters should enjoy their farms, houses, goods and chattels, with the same privileges and upon the same terms as they do now possess them; both the people of the West India Company, and of the city of Amsterdam.⁷ They were to know no alteration "only that they change their masters." He was to represent to the Swedes the advantages of "their happy return under a monarchical government," and to set forth his Majesty's good inclinations to that nation, as well as to all men who should comply with his Majesty's rights and titles in the country, without force of arms. In case assistance should be found necessary, messengers were to be sent to the Governor of Maryland, asking for aid. To my Lord Baltimore's son and others of the English that were concerned in Maryland, the Commissioner or Commander was to state, that his Majesty at great expense had sent ships and soldiers to reduce all foreigners in these parts to obedience, and for that

"Whereas we are informed that the Dutch have seated themselves in Delaware Bay, on his Majesty of Great Britain's territories, without his knowledge and consent, and that they have fortified themselves there and drawn a great trade thither, and being assured that if they be permitted to go on, the gaining of this place will be of small advantage to his Majesty; we, his Majesty's Commissioners, by virtue of his Majesty's commission and instructions to us given, have advised and determined to endeavor to bring that place and all strangers there, in obedience to his Majesty, and by these do order and appoint that his Majesty's frigates, the *Guinea*, and the *William and Nicholas*, and all the soldiery which are not in the fort, shall with what speed they conveniently can, go thither, under the command of Sir Robert Carre, to reduce the same, willing and commanding all officers at sea and all soldiers to obey the said Sir Robert Carre during this expedition.

"Given under our hands and seals, at the Fort at New York, upon the Isle of Manhattoes, September 3d, 1664.

"RICHARD NICHOLLS.

"GEORGE CARTWRIGHT.

"SAMUEL MAYERICK."

"The whole of the territory claimed by the Dutch on the western side of the Delaware, was at this time under the government of the city of Amsterdam. The colony of the company had been ceded to the city the preceding year, and Minoyosa had been appointed Governor of the whole country.

purpose only; but the reduction of the place being at his Majesty's expense, the country would be held for his Majesty's own behoof and right, yet, that if Lord Baltimore held claim there by his patent, (which it was said was a doubtful case,) he might be informed, that possession would only be continued until his Majesty should become informed and satisfied in the case.⁸

Sir Robert Carre was entirely successful; upon his arrival in the Delaware, the different forts were surrendered, and the people submitted with scarcely an appearance of resistance. Articles of agreement were concluded which purported to be "between the Honorable Sir Robert Carre, Knight, on the behalf of his Majesty of Great Britain, and the Burgomasters on behalf of themselves, and all the Dutch and Swedes, inhabiting on Delaware Bay, and Delaware River."⁹ The burgesses and planters were to submit themselves to his Majesty without opposition, all persons whatever thus submitting, being promised the fullest protection in their persons and estates. All civil offices, and officers, were to be continued until his Majesty's pleasure should be farther known; all persons were to enjoy full liberty of conscience, in church discipline as formerly. Any person who might wish to leave the country, should be permitted to depart with his goods, within six months from the date of the treaty; all who should remain, were to take the oath of allegiance, and whoever should take the oath, should, from that time, be considered a free denizen, and entitled to the privileges of trading into all parts of his Majesty's dominions, as freely as any Englishman.

This agreement was concluded on the 1st of October, 1664.¹⁰ "That was the day on which the whole of New Netherland became subject to the English Crown."¹¹

Thus, in the mutations of human affairs, the fate of New Sweden now fell in turn, to the lot of New Netherland.

⁸ From the representations here made, it would appear that the people of Maryland had partial possession on the Delaware at the time, the Dutch enjoying no more the divided authority.

⁹ These Burgomasters were Garret Saunders, Vautiell, Hans Block, Lucas Peterson, and Henry Cousterier. Gordon's *New Jersey*, p. 21.

¹⁰ Smith's *New Jersey*, p. 50.

¹¹ Smith's *New York*.

One of the circumstances incident to the change that had occurred, was an alteration of names. New Amsterdam received the name of New York, which was given in honor of the Duke, and with the same intent, Fort Orange was called Albany, from one of the titles of his Royal Highness.

The subjugation of New Netherland by Charles the Second, has been represented by historians as an act of flagrant injustice and usurpation.¹² The charge contained in this representation is a subject requiring attention, not for the purpose of defending the King, but in order to determine important questions of right. Charles the Second was a profligate, both as a man, and as a monarch, and no extenuation of his general course, will here be attempted. As already remarked, the considerations which led to the act in question were various in origin and character, and they were probably different also, as to the degree of their influence: and in such a mind as the King's, the strongest and best, may not have exerted the greatest force. It may not be safe to affirm that with him the most powerful motive was a firm conviction that the country he resolved to subdue, belonged to his people. But it can scarcely be necessary in such a case to enter into any analysis of motives, no more is required than fairly to determine the real character of the act itself. If the country held by the Dutch, belonged of right to the English nation, it is not important to inquire, what were the particular views which induced the King to attempt the subjugation; if, on the contrary, the English had no right to the country, if the Dutch were its real owners, then the procedure of the King may truly be characterized as an act of "usurpation," whatsoever his professions or motives might be. In defending their position, the Dutch professed to have derived their rights from three separate sources, discovery, a purchase of the land from the native princes and people of the country, and actual continued possession.

The question of discovery has already been considered.¹³ On this ground the Dutch were entirely precluded. The entire extent of coast had been discovered by the English, a fact which was

¹² Grahame and Gordon.

¹³ See page 36.

known to the Dutch, and to every civilized nation. And this claim had been fully consummated by actual possession.

Whether a right to the country could be acquired in the second mode, a purchase from the princes and people of the land, must be determined by the question, how far the claim from discovery was affected by the occupation of the native inhabitants. At the arrival of the Europeans in North America, they found the whole extent of the country before them, nearly in a state of primeval wildness. There were scarcely any marks of culture, or evidences of ownership; the whole was a wide unbroken waste. To civilized men it appeared indeed as a new world, and for all the purposes of civilized life it really was an unappropriated domain. The store-houses of the native inhabitants were the forests and the streams. Generations had appeared and perished and had scarcely left a notice of their existence behind them. As might be supposed, the ideas of such a people in relation to the rights of property, were crude and unsettled. No other possession was held by individuals than the few implements they used, and the materials needed in the construction of their rude habitations. Property in land was not known. Such being the condition of the country and of the people, no attempt was made by the Europeans to derive a title from the natives; they based their claims upon the ground of original acquisition. Such a claim, in its principle, was no more than an assertion of the superiority of civilized to savage society and modes of life, and that the latter must give place to the former; a principle which it would be vain and useless to deny. The application of this principle or rule, however, was liable to some restriction. If the Europeans had acquired an original claim to the country, this claim did not operate to the immediate extinction of the Indian right from actual occupancy, it only took the country subject to this right. *It took and held the country subject to this incumbrance.* But this incumbrance could only be removed by the holders of the principal title, or if others should do or attempt this, it would be at their own hazard and loss; a third party could derive no advantage from removing the incumbrance, because the country would still be held by the superior claim.

At an early period these principles became generally recognized.

That discovery gave the primary or principal right to a country, was admitted by all European nations; it was acknowledged in all their negotiations, and wars, and treaties; whether equitable or not, the principle was universally acknowledged, and acted upon. It became national law.

If then, the people of Holland were not the discoverers of the country they occupied, or had not otherwise come into possession of the principal claim; a purchase from the princes and natives of the land, would be of no value or force.

Beside this, the Indian right itself was but imperfectly and partially secured. It is not easy to determine who among these tribes, or whether any, were clothed with sufficient authority to enable them to make a perfect conveyance of their rights or claims; but whether the agreements that were made, were concluded in such form, or by such authority as was generally acknowledged, or otherwise; it is certain that the contracts made were not considered of binding force. Lands that had been sold were sold again without any appearance of scruple; successive agreements were made with the different people that appeared, or with the same people, as occasion might offer, and after all, the lands thus sold, continued to be occupied, as before.¹⁴ And even the right to be acquired by such conveyances as these, slight as it was, was only partly obtained by the Dutch; they purchased but a small part of the territory of New Netherland, having concluded agreements with only a few of the numerous tribes that occupied the country.¹⁵

¹⁴ In some instances the natives of America when selling their lands, made a special condition reserving the right of hunting and fishing upon them. Whether this was done in the agreements with the Dutch, there is nothing to show.

¹⁵ There was yet another difficulty in regard to the conveyance of the Indian right, arising out of the peculiar character of the customs of the people themselves. It has been mentioned, that at an early period, the Dutch had formed a treaty of peace with the great Five Nation Confederacy, and that the Lenape tribes were then present. According to the traditions of the latter nations, they were then prevailed on by the urgent representations of the other tribes, (in which the Dutch are said to have joined,) to assume the character of mediator, or peace maker. They were to lay down their arms, and trust their defence to their confederates, exerting themselves only in such modes as were in accordance

Possession is the remaining ground of title relied on by the Dutch, and by this mode an unexceptionable title may sometimes be acquired. Possession may be taken of unoccupied lands when the original holders have either abandoned or lost their claims. Or, without such previous abandonment and loss, if a second party should enter a country and take possession, and should continue in enjoyment without interruption, for a sufficient period of time, the original holder would be estopped, his right would be extinguished. If these conditions existed in the case in question, the claims of the Dutch must be admitted; but these conditions did not exist. Previously to the coming of the Dutch, the English, the original claimants, had entered the country themselves, and taken possession, and were in actual possession at the time. The Dutch might still have rendered themselves masters of the country by the extinction of the prior claims of the English, either by treaty or purchase, but this was not affected or even attempted. They might also acquire a title by long and uninterrupted possession, but this they were not permitted to do. They had scarcely entered and seated themselves on the territory when they were visited by an English officer who asserted the rights of his nation, and compelled the settlers to acknowledge the authority of his Sovereign, and to agree to the payment of an annual tribute. Other measures were afterwards taken; grants were made by the

with the character and offices they had assumed. In the figurative language of the race, they became "women," and were thus reduced to a state of dependance. The enemies of the Lenape people assert that this change in their condition was the result of a series of hostile contests; that they were subdued by force of arms, and compelled to yield, as a conquered people. Whether force or fraud were the means, the subjection of these tribes is admitted, and as a consequence they lost dominion over their country. The other nations insisted that the Lenape people had no right to make treaties, or to dispose of their lands in any manner. At a subsequent period, Canassatego, a Chief of the Six Nations, was called on to settle a dispute between the English and the Indians, in relation to land on the Forks of the Delaware. The Chief addressed himself to the Delaware tribes, and declared that the lands they now claimed had already been sold, to his own knowledge, and therefore their present demand was intended as a fraud. But said he to them, "how came you to take upon you to sell lands at all; we conquered you; we made women of you; you know you are women, and can no more sell land than women."

English government conveying to its subjects the territory occupied by the Dutch, and in this manner the English right was asserted and reasserted. The English colonists also continued to maintain, that of right the country belonged to them or their nation: and besides these declarations, they attempted at various times to secure possession of different portions. In some of these instances their efforts were successful, in others they failed, but in either case, the claim was maintained. The Dutch were not allowed to establish a title by long and peaceable possession.

To sum up the case, the Dutch had no right as discoverers of the country. They acquired by purchase from the natives only a part of the country, and the conveyances obtained were imperfect and doubtful, and if these conveyances had been full and good, and had embraced the whole of the territory, still, the principal right which was held by the English, remained untouched. Finally, their possession of the country was interrupted and incomplete, and therefore was not sufficient to establish a title.¹⁶

If these conclusions are well founded, they will serve, if not completely to justify the conduct of Charles, the English King, yet at least to absolve him from the charge of "flagrant injustice and usurpation."

Yet, if the claims of the Dutch to the country of New Netherland were not such as to secure to them its permanent and full possession and control, still, these settlers were not destitute of equitable rights. They had subdued and cultivated the lands, they had navigated the streams, and erected dwellings. They had prepared a home for civilized man. And they were allowed to continue in its enjoyment. No one was dispossessed of his lands or turned from his dwelling, the people remained in the possession of their property of every description. The only change was

¹⁶ The principal circumstances that may be urged in support of the Dutch claim, are the implied acknowledgment in their favor, contained in the colonial arrangement respecting boundaries, made in 1650; and the treaty afterwards concluded between the republics of England and Holland. But the colonial agreement was not finally ratified in England. And the provisions of the later treaty were extended to the colonies rather by inference, than express stipulation, nor could these provisions if extending to the colonies, be fairly construed as determining any questions of title.

one that many of the colonists themselves desired, and which was probably beneficial to all.

But the reduction of the country was not quietly submitted to by the Dutch; a general war between England and Holland was the consequence. This circumstance however, made no alteration in the course of affairs in the province; this was not made the theatre of war, and at the conclusion of hostilities, it was left in the hands of the English.

The agreement which had been concluded between the English King, and his brother, the Duke of York, was now to be carried out into full effect; the latter had been invested by the terms of his grant, with full authority both as owner and ruler, within the country to be subdued, and the subjection was now completed. In pursuance of the plan, Nicholls, who had been appointed to the government of the country under the Duke, assumed the direction of affairs.

But, previous to the actual investiture of the Duke of York, a division of the country had been made. Not long after the reception of the grant from the King, and before he had been put in possession, the Duke conveyed a portion of the territory to two other individuals, Lord Berkely and Sir George Carteret. Different motives have been assigned as leading to this grant from the Duke: no other is apparent, than a desire to give expression to royal approbation, the grantees, at the time, being high in favor, as well as in place, at the English Court.¹⁷ The conveyance to Berkely and Carteret was made by an instrument in form as follows:

“This Indenture, made the three-and-twentieth day of June, in the sixteenth year of the Raigne of our Sovreign Lord Charles the Second, by the Grace of God of England, Scotland, France, and Ireland, King, Defender of the Faith—Anno Domini 1664. Between his Royal Highness James Duke of York and Albany, Earl of Ulster, Lord High Admiral of England and Ireland, Constable of Dover Castle, Lord Warden of the Cinque Ports, and Governor

¹⁷ See Nicholls' letter to the Duke of York. The statements there made in reference to the causes of the grant to Berkely and Carteret, wear but a doubtful appearance.

of Portsmouth, of the one part, John Lord Berkeley, Baron of Stratton, and one of his Majestie's most honorable Privy Council, and Sir George Carteret of Sattrum in the county of Devon, Knight, and one of his Majestie's most honorable Privy Council, of the other part, Witnesseth that said James Duke of York, for and in consideration of the sum of ten shillings of lawful money of England, to him in hand paid, by these presents doth bargain and sell unto the said John Lord Berkeley and Sir George Carteret, all that tract of land adjacent to New England, and lying and being to the westward of Long Island. Bounded on the east part by the main sea, and part by Hudson's River, and hath upon the west Delaware Bay or River, and extendeth southward to the main ocean as far as Cape May at the mouth of Delaware Bay, and to the northward as far as the northermost branch of said Bay or River of Delaware, which is in forty-one degrees and forty minutes of latitude, and worketh over thence in a straight line to Hudson's River—which said tract of land is hereafter to be called by the name, or names of **NOVA CÆSAREA, or NEW JERSEY.**"

The name was given in honor of Carteret, on account of his spirited defence of the Island of Jersey, at the time he was Governor of that Island.

CHAPTER VIII.

NEW JERSEY.

THE ESTABLISHMENT OF GOVERNMENT.

It has been seen that the territory now recovered by the English, had been granted by the King, to his brother, the Duke of York. The right of the King of England to grant out new lands to his subjects, could not be called into question; it was one of the prerogatives of the Crown which the laws of the realm had yet left untouched. The country now granted, was given as Crown lands; as territory held by the Sovereign by right of descent; the possession of the country by the Dutch at the time of the grant, was in no wise regarded, they being considered as mere intruders upon the rights of others. But the grant was a conveyance of the powers of government as well as of the rights of property. The institution of government in new countries under British authority, was effected in different modes. Power was sometimes simply delegated by the King to certain individuals to act as his representatives, and these individuals were entrusted with such an amount of authority, as the Sovereign might choose to entrust to them, only that it could not exceed his own, in kind or degree. In these cases the power of government was entirely unconnected with any thing else, and its duration was determined by the discretion or will of the original grantor. Such were royal governments. In some cases *charters* were granted which gave authority for the institution and perpetuation of government by the acts of the people, according to such forms as were prescribed in the charter, or as they should adopt. In other instances power was given in connexion with property; portions of territory were granted,

and the grantees were invested at the same time with authority to govern within the limits assigned to them, but subject always to allegiance to the Crown, and sometimes to farther limitations. These were proprietary governments. In such governments, unless special agreements were made to the contrary, the duration and transmission of authority were governed by such regulations as applied to the property with which it was connected. No certain period was prescribed for its continuance and it was made transferable like property, to heirs, and also to assigns. The authority granted to the Duke of York may be considered as essentially of the proprietary character. The country was granted to him with all "the rents, revenues, and profits of the premises, and all our estate, right, title, and interest therein, and we do farther grant unto the said James the Duke of York, his *heirs, deputies, agents, commissioners, and assigns*, full and absolute power and authority to correct, punish, pardon, govern, and rule, all such person or persons as shall from time to time adventure themselves into any of the parts or places aforesaid, and to establish such laws, orders, and ordinances as may be thought necessary; so that they be not contrary to, but as near as conveniently may be, agreeable to the laws, statutes, and government, of the realm of England." The grant from the Duke of York to Berkely and Carteret, was of a similar character. In the instrument of transfer to them, the powers of government were not specifically given, but there was a general declaration that the grant was made to them, their heirs, and assigns, "in as full and ample a manner" as it had been received by the Duke himself, and in the absence of any reservation, all the incidents connected with the possession, would be fairly included.

Berkely and Carteret thus became *rulers* as well as owners of the country. They also, from the nature of the case, obtained the privilege of making a transfer to others; they might convey their powers and their interests to any other person, or to any number of persons. By thus placing political authority in connection with property, and making it subject to similar incidents, the allegiance and obedience of subjects were made transferable at the same time, and in the same modes as the titles to land. Government was rendered a thing that might be conveyed by bargain and sale, it might be passed over from hand

to hand, in the ordinary processes used in the management of mercantile affairs. This principle of action was not new, it existed in all the proprietary governments that had been established or projected in America, and was sanctioned by ancient usage. It had been introduced at a time when the rights and privileges of subjects were but little understood, or but slightly regarded, and such was partly the case at the time of the first institution of government in America.

The haughty Elizabeth held the reins of authority with a rigid grasp, and seldom yielded any thing to the wishes or the interests of her people, unless it was unsafe to refuse. James, her successor, though not lacking in general knowledge, was yet so deficient in practical wisdom as to render him unable to determine what he should grant, and what he should refuse. The second Charles was resolved to grant nothing at all, and his troubled reign was but a struggle to retain the powers which his predecessors had exercised, as well as the abuses they had practised, and his efforts terminated in the loss of his crown, and his life.

The second Charles had seen much of adversity, and had come to the throne at a time when the marks of the political convulsions which had occurred, were still visible around him. It was a period abounding in lessons for rulers and kings. But Charles had never been apt in learning the lessons of wisdom, and if any of those around him were more gifted than himself, they may have found it more prudent to conceal, than to exhibit their advantage.

But, although the mode in which the proprietors of New Jersey had become possessed of authority, was not in accordance with liberal and enlightened principles of government, they still, so far as is apparent, had no design or desire to use it improperly. On the contrary, there was exhibited in their measures a degree of liberality as well as sagacity. They manifested an acquaintance with the condition and the opinions of the people, in England and America, and evinced both ability and willingness to adapt their action to the condition of affairs existing at the time. In a severe judgment indeed, a doubt might be started, whether the course of policy pursued by the proprietors, was not adopted from necessity, rather than inclination; but even such a doubt, if it abated somewhat from a claim to liberality, would entitle them to higher praise, for discernment.

The institution of government at that period, required a cautious and a skilful hand. There had been a long period of agitation, during which the civil and political institutions of the realm of England had been shaken to their centre, and although the action had now subsided, the consequences were still apparent. It had been a period too, of eager inquiry as well as of determined action. The minds of men had been excited to a high degree of activity; the true principles of liberty had been brought to light, and been widely disseminated, and had taken a deep and firm hold in the common mind. Their growth might be checked, it had been checked, but still these principles had not been deprived of their vitality or force. If monarchy had been restored as the only apparent means of bringing settlement and quiet to the kingdom, yet the King was no longer acknowledged as a master, to control at his pleasure the destinies of his people. His powers were now to be exercised, and could only be safely exercised, with a view to the rights and liberties of the subject.

In the American provinces the state of opinion and feeling was even further advanced than in the parent country. Many of the colonies had been settled by persons whose principal object had been the fuller enjoyment of liberty, civil and religious. The undertaking indeed had not, in all instances, been carried on in the spirit of the original object, exiles for conscience sake had become oppressors and persecutors; the garment of the Puritan, had become stained with the blood of the Quaker. But still, the prevailing tendency, the general movement, on both sides of the Atlantic, was favorable to popular freedom. Under these circumstances the interest of the founders of States became obvious, whatever other inducements they might offer, their object would be most effectually promoted by making provision for securing to the people the full enjoyment of civil and religious privileges and rights. This, the proprietors of New Jersey appeared to perceive, and to understand.

Not long after the reception of their patent, measures were devised for peopling and governing the country. The proprietors established an instrument which may not improperly be termed, a constitution, being a fundamental law, according to which the government of the province was to be established and conducted.

This instrument was entitled "The Concession and Agreement of the Lords Proprietors of the Province of New Casarea, or New Jersey, to, and with all and every of the adventurers, and all such as shall settle or plant there." It was dated February 10th, 1664.¹

This scheme of government is entitled to careful attention, not only on account of its own character, but also from its particular position in the history of New Jersey.

It provided that all persons who are, or should become subjects of the King of England, and swear or subscribe allegiance to the King, and faithfulness to the Lords Proprietors, should be admitted to plant, and to become freemen of the province.

That the people should be secured in the enjoyment of property; no taxes of any description were to be imposed, except such as should be ordered by the General Assembly of the province. Full toleration in religion was also allowed, no person should be in any ways molested, punished, disquieted, or called into question for any difference in opinion or practice in matters of religious concernment, who should not actually disturb the peace of the province, but that all and every of such person or persons, might from time to time, and at all times, freely and fully have and enjoy his and their judgments and consciences, in matters of religion, they behaving themselves peaceably and quietly, and not using their liberty to licentiousness, nor to the civil injury or outward disturbance of others; any law, statute, or clause contained or to be continued, usage or custom of the realm of England, to the contrary thereof, in any wise notwithstanding.²

The government of the province was to be exercised by a Governor and Council and General Assembly.

The Governor was to receive his appointment from the Proprietors. The Council should be selected by the Governor; he

¹ Grants and Concessions compiled by Leaming and Spicer, p. 12.

² And that the right of advowson granted in the patent to the proprietors, might not be exercised by their heirs or assigns so as to infringe upon liberty of conscience, the General Assembly of the province was empowered to appoint such, and so many ministers as they might think fit, and establish their maintenance, giving liberty besides to any person or persons, to keep and maintain what preacher or ministers they should choose.

might make choice of six Councillors at least, or twelve at most, or any even number between six and twelve.

The General Assembly formed the legislative authority of the province. It was composed of the Governor and Council and a representative body chosen by the people in manner as follows: So soon as the Proprietor's commission should be received in the province, a writ should be issued by the Governor for the election of deputies; they were to be chosen by such of the inhabitants as were freemen or chief agents of others; the deputies chosen to be twelve in number. But so soon as parishes or other divisions of the province should be made, then the inhabitants or freeholders of the several divisions should, by writ (which it was promised should be issued in time) annually meet on the first day of January and choose freeholders for each respective division, to be deputies or representatives of the same, which body of representatives, or a major part of them, should, with the Governor and Council, form the General Assembly of the province. The Governor or his deputy should be present and preside in the Assembly, unless these officers should refuse, in which case the Assembly might appoint its own president for the time.

The General Assembly were empowered to appoint the times for their own meetings and adjournments, and to determine the number of their quorum, provided that such number should not be less than one-third of the whole number. They were authorized to enact all such laws and acts as should be necessary for the well government of the province, provided that such laws and acts should be consonant to reason, and as near as might be, agreeable to the laws and customs of the realm of England, and not contrary to the interest of the Lords Proprietors, or contrary to the concessions. Laws were to remain in force for one year (unless contradicted by the Lords Proprietors,) within which time they were to be presented to the Proprietors for approval, and when confirmed, were to be in force until repealed, or until they should expire by their own limitation. The General Assembly had power to constitute all courts, and to determine the limits, powers and jurisdictions of the same, and also the offices, and the number of officers belonging to each court, with their respective salaries, fees and perquisites, with their appellations and dignities and the

penalties that should be due for the breach of their several and respective duties, and trusts.

The Assembly might lay equal taxes and assessments upon all lands (excepting the lands of the Lords Proprietors before settling) or upon persons within the several divisions, as necessity might require, and in such manner as should seem most equal and easy to the inhabitants.

Enactments might be made for the defence of the province, providing for the erection of forts, castles, and other places of strength, and defence, and also to create military companies, and to make war with all Indians, strangers and foreigners, as cause should arise.

The Assembly might pass laws for the naturalization of strangers as also for the division of the province into parishes or districts, and for the apportionment of land to settlers, in accordance with the directions given by the Proprietors. Acts were to be passed providing for the maintainance and support of the Governor, and for defraying all the necessary charges of the government.

The Executive department of the government was committed to the Governor and Council. The Governor might appoint a Secretary of the province and also a Surveyor General, in case these officers were not appointed by the Proprietors themselves. By the joint action of the Governor and Council, a Deputy Governor might be appointed, who should continue in office during the absence of the Governor, or in case of his death, or removal, until farther orders should be given.

In case of the death or removal of any member of the Representative body, the Governor and Council were to issue summons by writ to the respective divisions or divisions commanding the freeholders to elect others in their stead. They should see that all courts established by the laws of the General Assembly, and all officers, civil and military, should execute their duties, according to the laws in force. They were to nominate and commissionate the officers belonging to the several courts, (the offices, with the duties appertaining to each, being determined by the laws of the Assembly) but freeholders only were to be appointed to these offices, except with the special assent of the General Assembly. In like manner they were also to nominate and commissionate all military officers.

The Governor, with the advice of his Council, or without, in case of immediate danger, was to collect and command the military forces of the province, and to suppress all rebellions and mutinies, as well by sea, as by land.

The Governor and Council might grant a reprieve to criminals after condemnation, but the power of final pardon was reserved to the Lords Proprietors.

Beside the positive grant allowing to the General Assembly the power of imposing taxes, a prohibitory article forbade the exercise of this power by the Governor and Council; they were not to impose nor suffer to be imposed, any tax, custom, subsidy, tollage, assessment, or any other duty whatsoever, upon any color or pretence, other than what should be imposed by the authority and consent of the General Assembly.

Full provision was made in the concessions in relation to the privileges to be granted to planters; the mode of granting lands, and the proportions to be assigned to settlers, according to the time of their coming, and the number and capacity of the persons, were distinctly set forth.³

By a general provision, it was made lawful for the representatives of the freeholders within the province, to make any address to the Lords Proprietors touching the Governor and Council or any of them, or concerning any grievances whatsoever or any other thing they might desire, without the consent of the Governor and Council or any of them.

Such was the form of government provided in the concessions, which embodied many of the principles which belong to the most liberal institutions. It gave entire exemption to the people from all taxation except such as their representatives should assent to, and as a farther security of property, it gave to the Assembly the full control over all the expenditures of government.

Freedom of conscience and worship was secured to every one who should conduct himself as a peaceable citizen. Justice was to be administered by tribunals erected under popular authority, and an additional security against the arbitrary exercise of power was given by the concession of an unlimited privilege of appeal or petition.

³ See Grants and Concessions from p. 12 to 20.

Had the plan of the concessions been fully pursued, the government established thereby would have nearly approached to the popular character, at least in regard to the legislative department. By the increase of numbers in the representative branch of the General Assembly, the popular element would have finally acquired a degree of strength that must have given it a controlling influence.⁴ But, as will presently be seen, the actual working of the plan did not entirely agree with its general theory.

On the same day that the instrument of government was signed, Philip Carteret, a brother of one of the Proprietors, received a commission as Governor of New Jersey. He made immediate preparations for departure, and in company with a number of persons who were disposed to adventure as planters, he sailed from England and arrived in the province in August, 1665. They landed at a place to which they gave the name of Elizabeth, in honor of the lady of Sir George Carteret.⁵

But previous to the arrival of the Governor, circumstances had occurred in the province, which offered an obstruction to the pursuance of the proprietary measures, and which proved in the end a source of serious embarrassment to the government.

As already stated, a commission had been given to Colonel Nicholls, by which he was authorized, on behalf of the Duke of York, to assume the direction of affairs throughout the whole of the country that had been granted to the Duke.

Nicholls had not been informed of the grant which was made to Berkely and Carteret, and therefore supposed himself to be in authority in the portion of country belonging to them, as fully as in other places, and had proceeded to exercise his powers therein. After the conclusion of his military duties, he had turned his attention to civil affairs; for the purpose of promoting the settlement of the country he published "conditions for new plantations,"

⁴ Although the number of deputies was limited at first, yet an increase of numbers must have occurred from the erection of new divisions in the province, and as the Assembly, according to the obvious intent of the scheme, would have formed but a single house, the numerical strength of the popular branch would have given it virtual control in the body.

Whithead's History of East Jersey, p. 36.

which conditions were supposed to be applicable to the entire extent of his province.⁶ The terms that were offered were regarded as liberal in their character, and were embraced by a number of persons, some of whom selected lands within the limits of New Jersey. Governor Nicholls held this portion of territory in high estimation, and had conferred upon it the name of "Albania," from one of the titles of the Duke of York. He had expected that much advantage would arise to his master, and perhaps to himself, from the settlement of "Albania," and became much dissatisfied at finding that a full conveyance of the country had been made to others. He expressed his disappointment in decided terms; he represented to the Duke of York the impolicy of dividing the province, and particularly of parting with the most desirable portion, and finally proposed that the grant should be recalled, or a composition be made with the holders by assigning to them a different portion of country.⁷

*The terms proposed by Nicholls for acquiring lands within the territories of the Duke of York, were these. Purchases were to be made from the Indian Sachems, and recorded by the Governor. The purchasers were not to pay the Governor for the liberty of purchasing. The purchasers were to set out a town and inhabit together; no one should at any time contract for himself with any Sachem, without the consent of his associates, or special warrant from the Governor. The settlers were to be free from all manner of assessment or rates for five years after their town plot was set out, and when this time had expired, they were only to be liable to the public rates and payments according to the custom of other inhabitants, both English and Dutch. All lands thus purchased and possessed, were to remain with the purchasers and their heirs, as free lands to dispose of as they pleased. Liberty of conscience was to be allowed, provided such liberty was not converted to licentiousness, or the disturbance of others. The several townships were to have liberty to make their own particular laws, and to decide all small causes within themselves. Every township should be obliged to pay their minister according to such agreement as should be made, and no man to refuse his proportion, the minister being elected by the major part of the householders inhabitants of the town. Every township should have the choice of their officers, civil and military, and all men who should take the oath of allegiance, and were not servants, or day labourers, but were admitted to enjoy a town lot, should be esteemed as free men of the jurisdiction, and could not forfeit the same without due process of law. *Grants and Concessions*, p. 667.

¹ [A portion of a letter from Colonel Nicholls to the Duke of York.]

"I must now descend to the particular occasion of giving your Royal High-

But if the Duke had any disposition to comply with such a proposal, he could not fail to perceive, that the season had passed; Nicholls was obliged to acquiesce in the loss of a portion of

ness this trouble, wherein my Lord Berkely and Sir George Carteret are concerned; who I know also will be so just to me, as to have me excused for manifesting clearly my knowledge to your Royal Highness. About ten days past Captain Bollen shewed me a letter from my Lord Berkely and Sir George Carteret, and therewith a grant from your Royal Highness to them for all the lands on the west of Hudson River, as more fully may appear in the said grant; wherein is comprehended all the improveable part of your Royal Highness' patent, and capable to receive twenty times more people than Long Island, and all the remaining tracts, in respect not only to the quantity of the land, but to the sea coast and Delaware River, and lastly, the fair hopes of rich mines, to the utter discouragement of any that shall desire to live under your Royal Highness' protection. In short, I hold myself obliged to give your Royal Highness this account upon certain knowledge, having exactly considered and preferred the advance of your Royal Highness' reputation in these parts above all considerations or obligations whatsoever; and for my boldness, I can at least but beg pardon. Neither can I suppose, that my Lord Berkely or Sir George Carteret knew how prejudicial such a grant would prove to your Royal Highness, but must charge it upon Captain Scot, who was born to work mischief, as far as he is credited or his parts serve him. This Scot, it seems, aimed at the same patent which your Royal Highness hath, and has given out words that he had injury done him by your Royal Highness; whereupon he contrived and betrayed my Lord Berkely and Sir George Carteret into a design (contrary to their knowledge,) of ruining all the hopes of increase in this territory, which he hath fully completed, unless your Royal Highness take farther order therein. Upon this tract of land several new purchases are made from the Indians since my coming, and three towns beginning. I gave it the name of Albania, lying to the west of Hudson's River, and to Long Island the name of Yorkshire, as to this place the name of New York, to comprehend all the titles of your Royal Highness. Far be it from me to aggravate any thing beyond the bounds of a faithful servant; for, when it may conduce most for your Royal Highness' service, I shall as freely surrender up all parts to your Royal Highness' pleasure as it becomes me to do. I presume farther to propose a better and more entire tract of land, worthy of great consideration, to my Lord Berkely and Sir George Carteret, which is that part of Delaware River which is reduced from the Dutch, if it is not already disposed; if so, then that my Lord Berkely and Sir George Carteret may have a hundred thousand acres along the sea coast, which is a most noble tract of land; but this will cost them £20,000 before it will yield them a penny, and their children's children may reap the benefit."

Some time afterwards in a letter to Lord Arlington, Nicholls farther remarks:

authority and to surrender New Jersey into the hands of Carteret. But in the action already taken, the foundation was laid for no little difficulty in future.⁸

Upon the arrival of Governor Carteret, he entered at once upon the discharge of the duties of his place. He adopted measures to invite attention to the province; messengers were sent abroad to publish the "Concessions," and to set forth the advantages that were offered, both in the government, and in the fortunate situation of the country. A rapid accession to the number of settlers rewarded the Governor's efforts; numerous emigrants entered from the neighboring settlements, and the population was farther increased by frequent arrivals from England. At an early period the executive authority of the province was fully established by the appointment of a Council; the Governor selected for this situation Captain Nicholas Verlett, Daniel Pierce, Robert Bond, Samuel Edsall, Robert Vanquellen and William Pardon. James Bollen was appointed Secretary of the province.⁹

One of the first and most important objects requiring the attention of government, was that relating to the apportionment, and the titles of lands. Lands were granted out in accordance with the provisions made in the concessions. These regulations, which were farther confirmed by instructions to the Governor, required

"My humble conception and certain knowledge direct me to inform your Lordship, that by the unskilfulness of the informers, the west side of Delaware River, now seated with Swedes, Finns and Dutch, is crushed between the Lord Baltimore's patent on the west side, and the Lord Berkely's indenture on the east, that the present inhabitants cannot possibly subsist in so narrow a compass." He therefore suggests "that twenty miles on each side of the River Delaware, should be given to Lord Berkely and Sir George Carteret instead of the land granted to them."

Note in Whitehead's East Jersey, p. 181.

* Large grants had already been obtained in accordance with the "Conditions" proposed by Nicholls. On the 30th of September, 1664, John Bailey, Daniel Denton, and Luke Watson, under permission from Governor Nicholls, had obtained from the Indians a deed for land which afterwards came to be known as the Elizabethtown tract. On the 8th of April, 1665, Nicholls confirmed another purchase to several individuals. This grant which is sometimes called the Monmouth patent, was the foundation of the settlement of Middletown and Shrewsbury.

See Grants and Concessions, p. 669.

⁹ The precise date of the appointment of these officers is not determined.

that the general divisions of land should be made by the Governor and Council and General Assembly, (if any be;) they were to divide all lands into general lots, one seventh part of each to be reserved to the Proprietors, and the remainder to be granted to individuals, or companies. Particular grants were to be made by the Governor or his Deputy: he should give to all applicants a warrant signed and sealed by himself and the major part of the Council, directed to the Surveyor General or his Deputy, commanding him to lay out and limit the grant. The Surveyor General was required by certificate to inform the Chief Secretary or Register of the name of the grantee, the date of the warrant, the number of acres, and the situation of land, which certificate was to be entered by the Register in a book prepared for the purpose. All lands were to be held in free and common socage. But for every acre thus granted there should be reserved a yearly rent of one penny or one-half penny, (according to the value of lands,) to be paid to the Proprietors, their heirs and assigns forever, the payment to be made on the five and twentieth day of March, of each year, to begin in the year 1670.

If lands thus granted should be neglected, and not planted with a sufficient number of persons, within the space of three years, they might be disposed of anew, but lands quietly held, planted and possessed for seven years after being duly surveyed, should not be subject to any review or resurvey.

The lands that were granted prior to the coming of Governor Carteret, comprehending the beginning of "three towns," were held by a title directly adverse to the proprietary provisions.¹⁰ They had been made by different authorities, and upon other terms; they were founded upon a purchase from the Indians, and a confirmation or license from Nicholls. The former of these in itself was of no value as an element of title, it could only remove an obstruction to the perfect establishment and enjoyment of title. The right to the territory was supposed to have been vested in the English King, and only he, or his grantees, could make a valid conveyance to others. The confirmation or permission from Nicholls

¹⁰ The grants that had been confirmed by Nicholls were the foundation of the settlements of Elizabethtown, and Middletown and Shrewsbury.

would probably have stood, had the country at the time been within his jurisdiction, but it had previously been conveyed, and all ownership and all proper authority were in other hands.

No immediate interruption of harmony resulted from the contrariety of interests and of claims, that thus arose in the province; the consequences may not have been fully foreseen. At subsequent periods various expedients were resorted to in order to remove the evil, or prevent the injury. Some of the grantees of Nicholls received new patents from the Proprietary government, and others disposed of their claims.¹¹ But the difficulty continued to exist; many of these claimants insisted that they had already obtained a sufficient title, and resolved to hold to the rights that had thus been acquired, without any regard to the proprietary regulations and demands.

At the same time that they obtained their lands, the settlers in the province received grants authorizing the exercise of particular privileges and powers. Nicholls had required, that settlements should be made in companies, that the planters "should set out a town and inhabit together," and to these "towns" certain corporate privileges were allowed. Similar grants were also made by Governor Carteret. These grants, which may properly be termed charters, formed instruments of government by which the people of the several places were enabled to make such regulations as their particular situation required, and also to supply any lack that might have existed at this early period, from the imperfect organization of the provincial government. The local charters were somewhat different in their conditions. That which was granted by Nicholls to the people of Middletown and Shrewsbury, and which was allowed to continue in force under the proprietary government, and which was finally confirmed, gave to the people important privileges. It gave full authority to dispose of the lands conveyed in their patent as to them should seem meet. To exercise their own

¹¹ Governor Carteret himself became concerned in a *re-phrase* from some of the holders of the Elizabethtown tract. He may have designed by the measure to lessen the difficulty from conflicting claims, but it was afterwards used as an argument against him, it being represented as an acknowledgment of the title obtained through Nicholls.

discretion as to the employment and maintainance of ministers. That all cases not criminal in their nature, should first have a hearing within their cognizance, and that no appeal should be taken to a higher court when the sum in issue did not exceed ten pounds. That criminal cases and matters above ten pounds were to be determined in higher courts, and appeals to his Majesty were not to be hindered. That the people should have the liberty to nominate two persons to fill each commissioned office, whether civil, or military, of whom one should be selected and commissioned by the Governor. Finally, they were to be allowed to make such peculiar prudential laws amongst themselves, as might be deemed necessary.¹²

An association which was formed in 1666, received a charter from Governor Carteret, in which they were allowed to choose their own magistrates for the government of the corporation; to select their own minister; to nominate their military officers and justices of the peace for the approval of the Governor, and to have courts to try all causes actionable within their own jurisdiction, from which no appeal should be taken when under the sum of five pounds. Liberty of conscience was guarantied short of licentiousness, and disturbance of the public peace. No tax or custom to be imposed, save such as should be approved by the provincial government, together with other particulars agreeing with the provisions of the proprietary concessions.¹³

In the same year (1666,) an association was formed by a company of persons in New England, for the purpose of forming a settlement in the province of New Jersey, and previous to their removal they adopted "two fundamental agreements touching their intended design," and these agreements exhibit a new feature of civil polity. The company resolved "that none should be admitted freemen or free burgesses within our town upon Passick River, in the province of New Jersey, but such planters as are members of some or other of the congregational churches; nor

¹² *Grants and Concessions*, p. 664.

¹³ The settlers under this charter were to settle one or two townships, consisting of from forty to one hundred families, between Rahway and Raritan rivers.

See note in Whitehead's East Jersey, p. 183.

shall any but such be chosen to magistracy, or to carry on any part of civil judicature, or as deputies or assistants to have power to vote in establishing laws, or making or repealing them, or to any chief military trust or office. Nor shall any but such church members have any vote in any such elections; though all others admitted to be planters shall have the right to their proper inheritances, and do, and shall enjoy all other civil liberties and privileges, according to laws, orders, or grants, which are or hereafter shall be made for this town."

That "we shall with care and diligence provide for the maintenance of the purity of religion professed in the congregational churches."

A portion of this body upon their arrival in the province, held a meeting "near to Elizabethtown and the Town Plots, on Passaic River," on the 21st of May, 1666, and resolved that at the arrival of their associates they would endeavor to settle together, and form one township, and be of one heart and consent with God's blessing in endeavoring to carry on their spiritual concerns, as well as their civil and town affairs, according to God and a godly government.¹⁴

The "agreements" entered into by these settlers, manifested a disposition to make the enjoyment of civil privileges dependent upon a certain religious profession and belief; a rule of action which had been generally adopted, and acted upon, in New England. It was fortunate perhaps that no such principle was recognized in the form of government which the Lords Proprietors of New Jersey had devised; had it been otherwise, the religious intolerance and oppression that had been witnessed in New England, might have been revived, to the injury and affliction of this new province.

A period of three years elapsed before the government projected by the Proprietors was brought fully into action. Earlier than this, the population and condition of the province were not supposed to be such as to require, that a general representative body should be chosen.

¹⁴ These settlers were from several different towns in Connecticut. They established themselves at Newark.

Whitchead, p. 45.

But on the 7th of April, 1668, Governor Carteret issued a proclamation requiring the freeholders of each town to make choice of two able men that were freeholders and dwellers within their limits, to be their Burgesses and Representatives in a General Assembly, to be held at Elizabethtown, on the 25th of May.¹⁵ In accordance with the Governor's direction, deputies were elected in the several towns, and met together, and on the 26th of May, 1668, the first Legislative Assembly in the history of New Jersey commenced its proceedings.

¹⁵ Whitehead, p. 52.

CHAPTER IX.

FIRST LEGISLATIVE PROCEEDINGS.—OPPOSITION OF THE PEOPLE TO THE GOVERNMENT.—RETURN OF THE DUTCH, AND RESTORATION OF THE ENGLISH AUTHORITY.

AT the first meeting of the legislative body, all the principal towns in the province were found to be represented.¹ The session seems to have passed with a good degree of harmony, and was brief in its duration; it continued but four days. A principal measure was the enactment of a bill of pains and penalties which was somewhat remarkable for its extreme severity. In many particulars, it followed the Levitical law; twelve crimes were enumerated for which, under certain circumstances, the punishment of death would be incurred. But it was prescribed “that no man’s life shall be taken away under any pretence, but by virtue of some law established in the province, that it be proved by the mouth of two or three sufficient witnesses.”

An enactment was passed providing for the expenses of government, ordering that the sum of thirty pounds should be raised, by a levy of five pounds on each of the towns represented at the time. It was also enacted that the Assembly should meet on the first Tuesday in November of every year, until they should see cause to alter the said time of meeting, and that the deputies of each town should be chosen on the first of January according to the concessions; and for the absence of any deputy, he should be liable to pay forty shillings for every day’s absence, as a fine to the county, unless the Assembly should see cause to remit the

¹ The following Burgesses appeared, for Bergen, Gasper Steenmetts and Balthazar Bayard; for Newark upon Pishawaek River, Captain Robert Treat and Samuel Swarne; for Elizabethtown, John Ogden, Sen’r. and John Brackett; for Woodbridge, John Bishop and Robert Dennis; for Middletown, James Grover and John Bound, the last named also represented Shrewsbury.

same. Extraordinary meetings of the Assembly might be called at the discretion of the Governor and Council, "as the necessity and weighty affairs of the province should require." Some other enactments were made and several matters were deferred for future consideration. The deputies informed the Governor and Council, that they had perused the contents of the several acts presented to them, and they thought it needful that laws should be made, "but by reason of the week so near spent and the resolution of some of our company to depart, and the meeting to surcease for the present, they were necessitated to refer the full consideration of them, until the next session of the Assembly."

The Assembly then adjourned to the 3d of November next ensuing.

The second meeting of the General Assembly, took place according to previous adjournment, on the 3d of November of the same year (1668.) At an early period of the session the defects in the government of the province began to be manifested. The powers to be exercised by the different departments were sufficiently determined; the authority assigned to the General Assembly was fully defined, and it was such as properly belonged to the body; the general aim was just. But the body was so constituted as to render harmonious action in the pursuit of the aims proposed, extremely uncertain and difficult. The two branches of which the Assembly was composed, were entirely different in origin, one being chosen by the people, and the other, appointed by the Lords Proprietors, or by the Governor. The points of agreement between these divisions, were not sufficient in number or strength to secure accordance in action, and yet the respective forces were balanced so nearly as to prevent the decided preponderance of either. The number of members in the proprietary branch, was nearly equal to the whole of the deputies. But in this particular a change would have gradually occurred from the increase of population, and the consequent addition to the representative body.²

²The number of representatives in this Assembly was increased by the addition of two deputies from Delaware River, they were Peter Jegon and Fabrus Outout. The whole number elected at this time, was fourteen, but the representatives from Middletown and Shrewsbury being dismissed, the number sitting was the same as at the former session.

But this advantage to the popular interest was entirely prevented by the separate meeting of the branches, a mode of procedure which would render numerical force of no effect; in separate chambers, the smaller body might effectually control the larger.

A number of acts of minor importance were passed or assented to, but the manner in which the business of the session was conducted, was soon productive of embarrassment, and perhaps of irritation. What particular circumstances led to this course of procedure, whether it resulted from a different construction of the terms of the concessions, or from the mere determination of one of the branches, is a matter that is left to conjecture. But it led to an open disagreement. On the third day of the session a message was sent by the deputies to the Governor and Council, to the following effect:

"We finding so many and great inconveniences by our not sitting together, and your apprehensions so different from ours, and your expectations that things must go according to your opinions, though we see no reason for, much less warrant from the concessions; wherefore we think it vain to spend much time of returning answers by writing that are so exceeding dilatory, if not fruitless and endless, and therefore we think our way rather to break up our meeting, seeing the order of the concessions cannot be attended to."

The Governor and Council replied that "in answer to your last proposition, we desire you to appoint two of your deputies to consider with us in what point we act contrary to the concessions, it being too late to-night to entertain so long a debate, we will be ready to-morrow morning to give them a hearing, and if reason will satisfy you, we shall be very well pleased that you proceed according to the Lords Proprietors concessions, and the trust reposed in you, if not you may do what you please, only we advise you to consider well of your resolutions before you break up."³

³ Grants and Concessions, p. 90. According to a fair interpretation of the terms of the concessions, the two branches were not only to *sit* together in one chamber, but to *act* together as one body; the latter particular however may not be so clearly determined as the former. But an entire separation took place.

The next day the Assembly adjourned *sine die*, and seven years elapsed before another convened.

Beside the want of harmony between the different branches of the legislative body, other circumstances occurred in the course of this session, calculated to have a disturbing effect. As already noticed, the people of Middletown and Shrewsbury had received a grant of land with a charter of privileges from Governor Nicholls, but no confirmation had yet been obtained from the proprietary government. Delegates from these towns had been sent to the first provincial Assembly, and had acted therein, giving their assent to the laws at that time enacted, and amongst others, to the enactment for raising a sum of money to defray the expenses of the government. But the people of these places refused to submit to the requirements of the Assembly; they would not allow the laws to be published, or any levy to be made within their limits, asserting that they were authorized by their charter to pass all necessary laws, for themselves. This was a virtual assertion of independent authority, though they had acknowledged the existing government by the election of deputies in accordance with the Governor's proclamation, as well as by the action of their representatives as a part of the legislative body. Under these circumstances the representatives sent by these towns at the second session of the General Assembly, were not allowed to take their seats, unless they would first subscribe the oaths of allegiance and fidelity to the government. This they refused to do, except with certain limitations, and they were consequently refused admittance. An act was then passed by the Assembly, appointing commissioners to visit these places, and to demand the amount that was due on account of the former requisition, and also a farther sum then ordered to be raised, and the commissioners were authorized, if necessary, to take the said sums by way of distress, and that the General Assembly would save them harmless. The commissioners were also authorized to demand "the positive resolution of the inhabitants" as to their submission to the government of the province.

What effect was produced by these measures is not known, as the subsequent suspension of the Assembly caused an entire interruption in the regular course of affairs.

The action of the Middletown settlers was the first manifestation of actual hostility to the proprietary government. But the elements of opposition existed, and the occurrences just noticed were well calculated to bring them into active operation. A period too, was now approaching which would be likely to test the dispositions of the people, and thus to afford an occasion for increased activity on the part of those who were not well affected. This occasion was the time for the payment of quit rents, which occurred on the 25th of March, 1670.

Immediate and general opposition was manifested. The principal agitators were those who were holders of lands which had been purchased from the Indians, by permission from Governor Nicholls, and among these persons the people of Elizabethtown became somewhat conspicuous. They asserted that they had already paid for their lands, and that their rights had been recognized by an officer who was believed to be properly qualified, and that according to the terms of the grant, they were to enjoy their property, as free lands. These declarations though correct as statements of facts, were yet wholly wanting in force. A purchase from the natives, in itself, would give no title, and Governor Nicholls had no authority at the time, to make any conditions, or agreements whatever. These settlers too, had continued in the province after the establishment of the existing government, and with a perfect knowledge of its provisions; they had participated in the privileges and the protection it granted, and some had taken the oaths of allegiance. An obligation had thus been formed to comply with the regulations that had come into force. But beside these persons, there were found in the ranks of the disturbers, many who had acquired their claims to land under the authority of the proprietary government. In regard to these individuals no plea whatever could be found to extenuate their opposition to the present demand. They had taken up property after being fully apprized of the terms, and their unwillingness to abide by the agreement must be regarded as evidence, that they were more sensible to the calls of interest, than to the demands of justice. But, whether with or without a plea, a large number of the settlers utterly refused to comply with the demands of the Proprietors.

Governor Carteret endeavored to uphold the authority and to enforce the demands of the government.

The people were urged to take out patents for lands, and the several corporations were warned to admit no persons to the rights of citizens, until they had complied with the regulations and laws of the province. But warnings and demands were alike disregarded, and during a period of two years the state of the province may truly be characterized as one of utter misrule. At length the opponents of the proprietary authority formed a determination to establish a separate government. Deputies were elected by the disaffected inhabitants in the several towns, and the members so chosen convened at Elizabethtown on the 14th of May, 1672, claiming to be the true representative body of the province. A new Governor was also selected. This individual was James Carteret, an illegitimate son of Sir George, a young man who had probably visited the country rather with a view to be free from restraint, than to exercise authority himself. He entered upon office in virtue of authority delegated to him by the people, through the Assembly. But besides this, he set up a claim to the government under the pretence of a grant from his father, which however, was never produced, and which there was nothing whatever to confirm, and the countenance given to this claim by the new Assembly, whilst it manifested a desire to justify their proceedings by an apparent regard to the rights of the Proprietors, showed, at the same time, a grievous want of a proper regard to truth. Many acts of injustice and severity were committed under the direction of the pretended government which had thus been erected, legal officers of the province were imprisoned, and their estates confiscated, and a complete subversion of the proper authorities seemed nearly at hand.⁴

⁴The disturbances that occurred in other parts of the province seem not to have extended to the settlements on the Delaware. The people there did not participate in the resistance to Governor Carteret's authority. The exact situation of this part of the province however, during this first period of Carteret's administration, is not fully determined. It has been seen that upon the recovery of the country upon the Delaware from the Dutch, an agreement was made with the people securing them in the enjoyment of certain privileges and rights, under the authority of the King. The claim of Maryland on the western side of the river, being put back by the superior authority of the Sovereign, the government was administered by Nicholls or officers appointed by him, until the further pleasure of the King should be known. The conveyance from the Duke of York to

Finding that all power to enforce the laws of the province was lost, the Governor's Council advised that he should return to England, and give full information to the Proprietors of the state of affairs, and receive from them such further instructions as the present emergency might be thought to require. This counsel the Governor determined to follow. John Berry was appointed to serve as Deputy Governor during his absence, and soon afterwards, in company with James Bollen, the Secretary of the province, he departed for England.

The Lords Proprietors gave the provincial officers a gracious reception. The favor of the Duke of York was also secured; at the request of the Proprietors the Duke addressed a letter to Governor Lovelace of New York, bearing date November 25th, 1672, in which instructions were given in relation to the disturbances that

Berkely and Carteret placed the territory on the eastern side of the river, under the proprietary rule, and in 1668, as has been seen, deputies from that portion of the province, formed a part of the Assembly of New Jersey. On the western side of the river, government was continued under the direction of Nicholls; a garrison of twenty men was established at New Castle, under the command of Captain Carre, and he, with a Council of six persons, had the control of all affairs, only, that in "matters of difficulty or importance" he was to have recourse by way of appeal to the Governor and Council of New York. The same mode of government was continued under Governor Lovelace. He ordered that a duty of ten per cent. should be collected at Hoarkill upon all goods imported into the Delaware, and also upon all exports, and appointed Martin Preiger to collect the same. In some particulars the Governors of New Jersey and New York proceeded in concert. In 1671 they concerted measures for the suppression of Indian disturbances on the Delaware, and it was agreed that nothing should be done without mutual advice and consent of both Governors, unless upon extraordinary occasions, where advantage against the enemy might be suddenly taken. In 1672 the government of New York gave corporate powers to the town of New Castle; the authorities consisted of a bailiff and six assistants. The English laws were to be established in the town, and among *the inhabitants on both sides of the Delaware*. Whether this extension of authority was actually attempted in New Jersey, at the time, is not known, but the situation of the province was such, that no resistance to such an encroachment would probably have been made. The authority erected at New Castle was maintained by the government of New York, restoring and finally defeating the attempts of the people and government of Maryland to recover the country, and afterwards, as will be seen, infringing upon the rights of New Jersey.

had occurred in New Jersey. Lovelace was directed to take notice himself, and when occasion should offer, to make known to the persons concerned, and to all others, that the Duke would countenance nothing which would derogate in the least from the grant he had formerly made to the Proprietors of the province, and the Governor was further instructed to give aid and assistance to the proprietary authorities for the restoration of order and quiet. The "pretended grants" from Colonel Nicholls were also expressly mentioned, and were declared by the Duke to be entirely void.⁵ The interposition of the King was also procured; a missive was directed by him to Deputy Governor Berry, confirming his appointment, and enjoining upon all persons obedience to the government of the Lords Proprietors. At the same time, measures were adopted by the Lords Proprietors themselves, to preserve their interests and maintain their authority. They issued "A Declaration of the true intent and meaning of us the Lords Proprietors and explanation of their Concessions." This explanation however was in fact a real alteration, changing the concessions in several important particulars. The authority that had been granted to the General Assembly was greatly reduced. The power of determining the times of meetings and adjournments which had belonged to the Assembly itself, was committed to the Governor and Council, so also was that to constitute courts in particular corporations,⁶ and to establish regulations for the allotment of lands. The right of advowson claimed by the Lords Proprietors and which they had granted to the General Assembly, was resumed and given to the Governor and Council, subject to the nomination by the several corporations. The authority of the executive body was further extended in regard to the appointment of the officers of the province, both civil and military.

It was also directed that in all General Assemblies the Governor and his Council were to sit by themselves, and the Deputies or Representatives to form a separate chamber. These changes gave almost a new character to the concessions.

⁵ Grants and Concessions, p. 32.

⁶ It was ordered that no more corporations should be established without the special order of the Lords Proprietors.

A general declaration was made at the same time, directed to the people of the province; in which, the Proprietors declared that all lands that had been granted by Governor Cartaret according to the terms prescribed, should remain to the owners and their heirs, forever, they performing the obligations they had entered into. But any claim founded upon grants from Colonel Nicholls the Proprietaries utterly disowned, unless the holders should patent their lands anew and pay the quit-rent, in which case, but not otherwise, they should enjoy their tracts under the laws of the province. Instructions were also given to the Governor and Council directing that land should be purchased from the Indians in the name of the Lords Proprietors, and that the expenses should be reimbursed by individual purchasers, at the same rate. The final payment of all quit-rents was deferred, being directed to be made in three years from 1673.

The several orders and documents that had been issued were received by Governor Berry, and were published in the province in May, 1673.

But Lord Berkely, one of the Proprietors who had become alarmed at the insubordination that had been shown, and dissatisfied with the prospect of pecuniary advantage, had already disposed of his interest in the province. He parted with the whole of his right and title on the 18th of March, 1673.

The course of conduct that was pursued by the settlers of New Jersey, or by that portion of them who were concerned in the disturbances that have been noticed, can in no wise be justified. The change that occurred at the establishment of the proprietary government may not have been fortunate for those who had already made purchases of land by the authority of Nicholls; the conditions granted by him were liberal in many particulars. But, as already observed, *he* had no authority at the time to make any conditions whatever. The provisions of the proprietary government may not have been equally favorable, and in some respects they were not, but whatever they might be, they became binding upon all those persons who chose to remain in the province, and still more upon such as deliberately entered, after the government had come into force. It has been remarked by an author of the highest repute, that "the colonists felt conscious of

their ability to take care of themselves."* But whether they were able to provide for themselves, or not, was far from the question in issue; they had entered either tacitly, or formally, into terms with the Lords Proprietors, and there was no other point to be determined, than whether they would stand by the agreement they had formed. Whatever plea to the contrary might be raised subsequent to the alterations of the proprietary concessions, nothing had previously occurred that could impair the obligation the colonists were under.

Whether the measures that had been adopted by the Lords Proprietors for the restoration of order, would have been attended with full success, there was no opportunity to determine. Before the period of trial had expired, the country had passed into other hands.

Besides those disturbances which were of domestic origin, the province was also to be agitated in consequence of its connexion with countries abroad.

The peace in Europe was broken; in March, 1672, war was declared against the Republic of Holland by Charles the English King, in conjunction with Louis XIV of France. The American provinces became again the theatre of hostile movements though the order of action was now reversed; the Dutch became the assailants. A squadron had been dispatched from Holland for the purpose of destroying the commerce of the English colonies, and after various attempts upon different parts of the coast, it appeared before New York, the ancient seat of the Dutch dominion. The arrival occurred at a most favorable period for the attainment of the object in view. Lovelace, the Governor, was absent, and the chief command had devolved upon Captain Manning. The conduct of this officer gave sufficient evidence of his unfitness for the trust, and has consigned his name (according to general esteem) to a place in military annals, as little to be envied as almost any throughout their range. The place was surrendered without any attempt at defence, and without any conditions; and full possession was taken by the Dutch on the 30th of July,

* Bancroft. The remarks of this author however, in relation to this point were afterwards materially changed.

See *Whitehead*, p. 56.

1673. The fall of New York was immediately followed by the subjection of the surrounding country, including the province of New Jersey; the Dutch had recovered their former possession.

At an early period a proclamation was issued setting forth their views and intentions; it guaranteed to the settlers the enjoyment of their rights and privileges, on condition of swearing allegiance to the States General of Holland. It required the attendance at New Orange, (as they called the city of New York,) of all the magistrates and constables from the surrounding country, including East Jersey, and the settlements on Delaware Bay. Most of these officers attended and took the oaths as prescribed. These proceedings were directed by the naval commanders and captains who had been constituted, or constituted themselves into a body for the establishment and ordering of government.⁸

Captain Anthony Colve was appointed as the Chief Administrative Officer. Application was soon made to the new authorities by a number of the English settlers in New Jersey, particularly those of Elizabethtown, Newark and Piscataway, praying that their rights and privileges under the present organization might be more fully made known. The application was immediately acted upon. The petitioners were assured that they should be protected in the possession of their lawfully acquired lands, that they should be placed on the same ground as the Hollanders, in regard to their civil privileges, and in case of peaceable behaviour, that they should not be required to take up arms against the English people or government. The laws of the Netherlands were to determine the descent of property, but all persons should be left at liberty to dispose of it by will, according to their discretion. Liberty of conscience was also promised to the same extent as in the mother country.⁹ These assurances seem to have given satisfaction to the petitioners, as well as to the other inhabitants of the province. But as a further means of securing quiet, and fixing the acquiescence of the people, it was thought neces-

⁸ The Commanders were Benckes and Evertzen, the Captains were Colve, Boes and Van Tyle.

⁹ Whitehead, p. 60.

sary to appoint Commissioners to visit the several settlements within the limits of "Achter Kol" as the province of New Jersey was called, and to require that each of the inhabitants should take the oath of allegiance; and this was done in most of the towns. Provisional instructions were also given to the magistrates and officers in different parts of the province, directing them as to the mode of conducting affairs. But after a period, a more permanent plan was devised; a meeting of the authorities and the principal officers of the province was held, and a code of general laws was prepared. These laws were promulgated on the 18th of November, "By the Schout and Magistrates of Achter Kol Assembly, held at Elizabethtown, to make laws and orders."

The provisions of this code were mild and liberal, and the preservation of religion and morals seems to have been as much an object of care, as the regulation of civil privileges and rights. The government thus established was conducted in a manner agreeing in a great degree with the spirit of the laws; the persons and property of the people were generally protected and made secure, whilst moral and religious observances were recommended and enforced.¹⁰ Officers were appointed to have charge in the several towns. Peter Alrich was commissioned as Commandant in the country upon the Delaware; he was instructed to require the inhabitants to take the oath of allegiance, and was directed also "to support the true Christian doctrine as it accords with the Synod of Dortrecht, and not permit any doctrine repugnant to it."¹¹

But all the provisions for the establishment and maintainance of government were rendered of little effect in consequence of an early change in the state of European affairs. On the 9th of February, 1674, a treaty of peace was concluded between England

¹⁰ Private property was not respected in all instances. Colve directed that the arms *and other goods* of the late Governor Carteret should be transmitted to William Hendrick, and afterwards, directions were given that certain persons who were said to have obstructed the execution of this order, should be apprehended and carried before the Governor.

See note in Whitehead, p. 62.

Aerelius.

and Holland. By the sixth article of this treaty it was provided "That whatever lands, towns, or forts had been reciprocally taken since the beginning of the war, shall be restored to their former possessors." In consequence of this agreement, the whole of the territory that had been taken possession of by the Dutch, including "Achter Kol" or New Jersey, was delivered back to the English, and the latter nation afterwards continued in possession until the time of the war which gave independence to the American colonies.

But the occupation of New Jersey by the Dutch, and its restoration to the English, gave rise to a new difficulty in regard to the proprietary interests and claims. It became a subject of doubt, whether, during these mutations the claims of the Proprietors had been merely suspended, or whether they had not been entirely extinguished and lost. It was supposed or apprehended, that in the course of such changes, the country might have been put back in regard to its political condition into the same state that had existed before the grants to the Duke of York, and to Berkely and Carteret, had been made. Being restored by the treaty to the English Sovereign, he, upon the supposition just mentioned, would be reinstated in his rights, and all after claimants be completely divested.¹² The question was one of too much intricacy to be easily determined, and yet of too much importance to be left open to doubt. As the only mode of cutting off objection and curing any defect that might exist, or be supposed to exist, it was resolved that an entirely new conveyance should be made. Accordingly on the 29th of June, 1674, his Majesty's Letters Patents were issued giving to his Royal Highness, James the Duke of York, the same portion of country that had been conveyed to him in the former grant. The conveyance was made nearly in the same terms as the original one.¹³

¹² The situation of the country when restored to the King might be considered as somewhat different from its state at the time the original grants were made. At that time it was held by right of descent, it might now be claimed from conquest, and the power of the King over conquered territory was regarded as greater than that in his inherited dominions.

¹³ See Grants and Concessions, p. 41.

The course of conduct pursued by the Duke upon the renewal of his patent, was such as to justify the belief that he was inclined to retain in his own hands the entire advantages given by the grant, or at the least, that he was desirous to retain the *authority* it conferred. Only two days after his patent was received, he gave a commission to Edmund Andross as Governor, and included within his jurisdiction the whole of the country from "the west side of Connecticut River to the east side of Delaware Bay," and thus the territory which had formerly been granted by the Duke to Berkely and Carteret was now subjected to a rule of his own appointment.¹⁴

But whatever were the wishes or intentions of the Duke, a renewal of his grant to the proprietary of New Jersey was made. It is possible that a sense of justice, or his regard to the persons concerned, may have overcome, in part, his early reluctance, or if these motives were not of sufficient force, the wishes and acts of his brother the King, could hardly be disregarded.

On the 13th of June, 1674, the King had caused a letter to be written in which he had recognized and confirmed the interest and authority of Sir George Carteret (the remaining original Proprietor) in the province of New Jersey. The King commanded all persons to yield obedience to the laws and government which were or which should be established by Sir George, "he being seized of the province *and of the jurisdiction thereof*, and having the sole power, under us, to settle and dispose of the said country upon such terms and conditions as he shall think fit."¹⁵ This letter was issued even before the grant from the King, to the Duke of York had been made. Under these circumstances a second conveyance of the province was hardly left to the Duke as a matter of choice, and the conveyance was made without long delay. On the 29th of July, 1674, just one month after the reception of his own patent, he executed a new conveyance to Sir George Carteret; it

¹⁴ The mere latitude of the commission given to Andross might not be considered as sufficient evidence that the Duke was desirous to establish and exercise authority in New Jersey, but his subsequent conduct gives ample confirmation upon the point.

¹⁵ Grants and Concessions, p. 49.

was made in a similar manner, and nearly in the same terms as the former one. But this second grant was made to Sir George Carteret in severalty, and included only a part of the territory of New Jersey. As before related, Lord Berkely had disposed of his interest, being one undivided moiety of the province, to other parties, and these parties were not included in any wise in the new agreement.

During the joint ownership of Berkely and Carteret no territorial division of the province had been attempted, nor is it certain that any had been contemplated, but in the conveyance now made to Carteret, a distinct line was laid down, dividing the territory into two separate parts. Whether this was designed at the time as a final measure, or only as a sort of provisional arrangement, is not determined, but it was far from making an equal division. It gave to Sir George "all that tract of land adjacent to New England, and lying and being to the westward of Long Island and Manhatoes Island, and bounded on the east, part by the main sea, and part by the Hudson River, and extends southwards as far as a certain creek called Barnegat, being about the middle between Sandy Point and Cape May; and bounded on the west, in a strait line from the said creek called Barnegat, to a certain creek in Delaware River, next adjoining to and below a certain creek in Delaware River, called Renkokus Kill; and from thence up the said Delaware River, to the northernmost branch thereof, which is in forty-one degrees and forty minutes of latitude; and on the north crosseth over, and thence in a strait line to Hudson's River in forty-one degrees of latitude." Within these limits much more than one half of New Jersey was included.

Sir George Carteret received back his province under the following circumstances. The King of England had expressly confirmed the authority formerly exercised by Carteret and his associate, under their grant from the Duke of York, as well as such authority as Carteret should afterwards exercise, and this confirmation from the King was in advance of all conveyances or grants to others, made subsequent to the Dutch possession. The Duke of York had also made *his* grant to Carteret in the same manner and form as the original one; the province was conveyed by the Duke as before, "in as full an ample a manner as it had

been given to him," and under the former conveyance the rights of government were supposed to be conveyed and had been actually exercised by the Proprietors, with the full concurrence of the Duke himself. But, before his grant to Carteret the Duke had included this very province in a commission of government given to Edmond Andross. In the conduct of the Duke there is exhibited a great degree of duplicity or obtuseness, or rather a singular mixture of both.

Philip Carteret, the Governor of New Jersey, whose mission to England has already been noticed, remained in that country during the time of the occupation of his province by the Dutch, and until the consequent proceedings were completed. So soon as the Proprietary authority was again confirmed, Sir George Carteret gave a new commission to his brother as Governor, and the latter soon afterwards returned to the province. He brought a new confirmation by Sir George of the concessions as "explained" by the joint Proprietors, with such other regulations as the altered state of affairs had appeared to demand.¹⁶

Nearly at the same time that Governor Carteret returned to New Jersey, Edmund Andross, who had been appointed as Governor under the Duke of York, arrived in the country, and took possession of his post. It will eventually be seen that the authority held or claimed, by these neighboring officers, brought them into frequent and rude collision.

Governor Carteret met with no opposition from the settlers at his return to the province; there was even an appearance of satisfaction. He published his commission at Bergen on the 6th of November, 1674, in the presence of his Council, and Commissioners from most of the towns, and thus resumed the reins of authority which he had been compelled for a time, to relinquish.

At an early period a General Assembly of the province was summoned, and the session began on the 5th of November, 1675. Eight members of Council including the Governor, were present, and fourteen Representatives appeared from the towns. The members of both bodies took the oath of allegiance to the King

¹⁶ Grants and Concessions, p. 55.

and fidelity to the Lord Proprietor, except that the oath was refused by one of the Representatives from Shrewsbury. He was dismissed.

Laws were enacted at this session for the defence of the province, against "any enemies or dangers that may accrue," by providing for the establishment and arming of military bodies, and the erection of places of security in the several towns. Provision was also made for the institution of regular courts to go under the denomination of County Courts.¹⁷ Two of these courts were to be held in every year in each one of the counties, adjacent towns forming a county, and a rate of fees for the court officers was also established. Regulations were made for the assessment of taxes throughout the province, and a "Country Treasurer" was appointed.¹⁸ A code of capital laws was also adopted, very similar in its provisions to that which had been passed in 1668.

An act of amnesty concluded the proceedings of the session. By this last mentioned act it was prescribed, that all inhabitants and members of the province should be freely pardoned of all offences, whether capital or other, committed between the year 1670 and the 1st of June 1673, and also that "all reviling speeches practices, or intents" tending in times past, to the disturbance of amity, should be pardoned by the Governor, and be buried in oblivion.

This favorable beginning seemed to give a promise of future harmony and success, a promise however, which was not in the event entirely fulfilled.

But before proceeding to consider the further course of affairs, it may be proper to notice the events which relate to the other portion of the province.

¹⁷ Previous to this time there had been no other courts than those established by particular corporations.

¹⁸ Samuel Moore, of Woodbridge, was appointed to this office, who was to have nine pence per pound for his care and pains.

CHAPTER X.

PURCHASE BY FENWICK AND BYLLINGE.—PARTITION BETWEEN FENWICK AND BYLLINGE.—SETTLEMENT OF FENWICK.—QUINTIPARTITE DIVISION.—PROVISIONAL GOVERNMENT.—PROPRIETARY GOVERNMENT.

It has been stated that on the 18th of March, 1673, Lord Berkely, one of the original proprietors of New Jersey, disposed of the whole of his right and interest in the province. The purchase was made by John Fenwick and Edward Byllinge.¹ These persons were members of the Society of Quakers or Friends, a religious people who had experienced much opposition and persecution, and there is reason to believe that a principal object proposed by Fenwick and Byllinge in making their purchase, was to secure a place of retreat for themselves and their religious associates. The Society of Friends had arisen in England at a time when all the elements which go to the constitution of general society, were in motion. It was a period of inquiry and of action. In the temporal affairs of men a most searching disposition had been working; the origin and nature of civil and political rights were inquired into, and the particular circumstances by which these might be endangered, as well as the points at which they had been actually encroached upon, were carefully noted. A spirit not unlike to this had also been in action in those higher investigations which relate to the spiritual concerns of man. The dogma which gave infallibility to one person as the head of the Church had long been utterly rejected, and the decisions of Councils and of Kings were no longer received as the true exponents of Christian doctrine. Man, individual man, claimed the right to know and to judge for himself, concerning the relation in

¹ They gave the sum of one thousand pounds.

which he stood to the maker and preserver of all. The Quakers or Friends became somewhat distinguished for the boldness with which they pursued their inquiries, and for the position they assumed in religious concerns. They went further than others in their questionings, and rejected almost every thing belonging to the "accidents or circumstances" of religion. They were resolved to stop at no shadow, but to reach to the substance. But this independence of thought and of action caused these persons to become objects of suspicion to those who were incapable of comprehending their singleness of purpose. The earthly themselves, formed no conception of the spiritual, except as mingled with the earthly. They were unable to comprehend an aim that was far above every thing connected with mere worldly advantage or aggrandizement. Hence, at the restoration of Monarchy, the Quakers were classed amongst those who were supposed to hold sentiments inimical to the peace and safety of the State, and were visited in consequence, with most rigorous persecution. A Royal proclamation was issued including them with persons known to be disturbers, and forbidding them to meet under the pretence of religious worship, except in the established parochial churches. A law applying particularly to them was also enacted, subjecting them to the severest penalties, and this law was enforced in many instances, in a manner the most unsparing. Under such an enactment too, escape was impossible; it operated not merely in the case of overt acts, but was directed against a name, and a mere negative offence. All *Quakers* who should refuse to take the oaths of allegiance were subject, and were subjected, to the penalties set forth, and this too, though it was constantly asserted by the sufferers, that their refusal to take the oath proceeded from no want of attachment to the State, but from a regard to the high injunction "swear not at all." Besides the proceedings against the Quakers on the charge of disaffection to the State, they were visited also in the name of the Church. At the restoration, Charles had issued a specious declaration giving a promise of liberty of conscience to his people, but he was wanting either in disposition, or in power, to fulfil his engagement. The English Church had rejected the authority of Rome and asserted the right to freedom of thought, but it resolved that this right should only be enjoyed within its own particular

bounds. It assumed that the true point had been reached, and that all who should advance beyond this limit, were to be regarded and treated as offenders. The Quakers were summoned to the ecclesiastical courts, and prosecuted and condemned upon various pretences; many were buried in prisons, and suffered the loss of their estates, and even of their lives. It is not wonderful, under these circumstances, that the members of this society should have been desirous to discover and secure a place of retreat. In support of their testimonies they shrank not from suffering, and a few it may be, with questionable zeal, were even disposed to invite it. But the soberer views of the body led to the belief, that suffering in itself, was not to be esteemed as a merit, and that to avoid it, without a compromise of their principles and faith, was not to be condemned as a fault. And a place of escape presented. New Jersey had been in the hands of persons who had been possessed of ample authority, and had established a tolerant government. These persons had been disappointed in the expected pecuniary return, but a pecuniary return from the labor of others, was not the object which the Friends proposed, but rather security and peace for themselves. Hence the offer of Lord Berkely to dispose of his interest in the province was readily met and accepted.

The conveyance from Berkely was made to John Fenwick, in trust, for Edward Byllinge. Some difficulty was afterwards experienced in determining the respective interests of these parties in the property they had purchased. The particular nature or cause of the embarrassment, is rather surmised than known, but it was necessary to effect a settlement. For this purpose the intervention of William Penn was requested; his talents in business and elevated character and standing, both within the limits of his own society, and also in the world, pointed him out as a proper arbitrator. His award was acceded to. It gave one-tenth part of the province, with a considerable sum of money, to Fenwick, and the remainder of the territory was adjudged to be the property of Byllinge.

No long time had elapsed before a new difficulty arose. Byllinge was a merchant, and was overtaken by a change of fortune, in consequence of which he was obliged to make a conveyance of his rights and interests in the province, for the use and benefit

of others. The property in the province, having been acquired, at least in part, with a view to the advantage it might afford to persons of his own profession, it was a proper desire that it should yet be held, so that the contemplated benefit might still be secured. It was therefore assigned to three of his fellow members in religious society, William Penn, Gawen Lawrie, and Nicholas Lucas. On the 10th of February, 1674, Fenwick and his constituent Byllinge, assigned nine undivided tenth parts of the province to the three persons just mentioned, to be held by them, in trust, for the benefit of the creditors of Byllinge. The remaining tenth part of the province continued in the hands of Fenwick. But not long afterwards, circumstances occurred by which this portion also, was placed, in a legal sense, under other control.

At an early period measures were taken by Fenwick to effect a settlement of the province: lands were sold to several individuals who proposed to adventure to the country, and this was also the design of Fenwick himself. But before his departure from England he procured a sum of money from two individuals, John Eldridge and Edmund Warner, and to secure the repayment of this, and some other sums, he executed to Eldridge and Warner a lease upon his portion of the province for one thousand years, with a condition allowing them to sell so much of the land as would reimburse them the amount of their claim. A lease with a discretionary power to sell, effectually placed the control of the whole in the hands of the lessees, subject only to a contingent claim, remaining with Fenwick.

Notwithstanding this conveyance, Fenwick considered himself as still possessing such rights in the province as would warrant his entering at once, and using, for his own particular benefit. Accordingly, he departed from London for the province, in company with a number of settlers; they arrived in June, 1675, and landed not far from the Delaware, at a place they called Salem. Here a permanent settlement was made. Soon after his arrival, Fenwick entered into treaty with the natives, and purchased from them an extensive portion of country.² He proceeded to divide

² He purchased all the lands included in the present counties of Salem and Cumberland. See *Johnson's Salem* for particulars in relation to these purchases.

the lands and make grants to the several settlers, and claimed authority in the province, as Chief Proprietor. But at an early period opposition was experienced, and that from a quarter which could have been but little suspected.

It has already been stated that the Duke of York had given a commission to Edmund Andross, in which New Jersey was included. But besides the acts and assurances of the Duke himself, Andross had published a proclamation promising that all former *grants, privileges or concessions* heretofore granted, and all estates legally possessed *by any* under his Royal Highness, before the late Dutch government, should be confirmed. This seemed to be sufficient acknowledgement of the rights and claims of the Proprietors of New Jersey, and of those who held under them. But these declarations were soon to be contradicted by positive acts.

Very soon after his coming to the country Andross gave a commission to Captain Edmund Cantwell to take command at New Castle, and to superintend the collection of the customs at Hoarkill. Upon the advent of the settlers at Salem, information of the fact was transmitted from Cantwell to his superior at New York. A council was directly held, and it was resolved that Fenwick having no order ("which if he had ought to have been first brought here and recorded,") should not be received as owner or proprietor of any land, and that as to any privilege or freedom of customs, or trading on the East Shore (of the Delaware,) none be allowed in any case "to the smallest vessel, boat, or person." This order was given December 5th, 1675.³ At a subsequent period (November 8th, 1676.) a communication was transmitted from Andross, to the Commander at New Castle concerning "John Fenwick's actings on the east side of Delaware River," in granting patents for land, and refusing to obey a warrant from the Commander and Court at New Castle, and a direction was given that Fenwick should be arrested and sent to New York. The attempt to execute this order was not quietly acquiesced in. Fenwick closed his house against the officers, and declared that he did not know that the Governor of New York had any concern with him, and that he was resolved not to leave his house unless

³ New Castle Records, cited by Johnson.

he should be carried away by force. But force was soon resorted to; on the 8th of December, 1676, a special meeting of the Commander and Justices was held at New Castle to take order for "the apprehending of Major Fenwick,"⁴ and a warrant was issued to Lieutenant Johannes De Haes, Michael Baroa, and George Moore, under Sheriff, to levy twelve soldiers and to repair to Salem and make the arrest of Fenwick, and authority was given to use any degree of force that might be found necessary for the purpose. The order was executed; Fenwick was taken to New Castle and afterwards sent to New York. Upon his arrival at that place, he produced to Governor Andross the King's letters patent, the Duke's grant to Lord John Berkely and Sir George Carteret, and the Lord Berkely's deed to himself, whereupon, as he himself states, he was released and allowed liberty to return without obligation. This release however was made with a condition that he should return on or before the 6th of October following, which accordingly he did, and was afterwards detained and kept as a prisoner by order from the Collector of Assizes, and was finally liberated, [according to the statements of Andross and his officers,] upon his parole not to assume any authority on the east side of Delaware River, until further warrant should be given.

During this time measures had been progressing for the more general settlement of the province. The assignees of Byllinge had proceeded in the exercise of their trust; many of the creditors of Byllinge accepted lands in satisfaction of their claims, and other individuals purchased directly.

A form of government for the province was also projected and prepared, an instrument which will presently be noticed, at length. To facilitate the settlement and government of the country, it was deemed important that a division should be effected with Sir George Carteret, the proprietor of the other part. This was the business of the original proprietors, such a settlement being implied in their agreement with purchasers. It was supposed

⁴ Fenwick had formerly been a military officer.

A circumstantial account of these proceedings is to be found among the New Castle Records. But every thing of importance is given by Johnson in the proceedings of the Historical Society of New Jersey, vol. 11.

that this division could be more readily and properly accomplished by placing the whole of the portion that had been purchased from Lord Berkely, in the hands of the assignees of Byllinge, they already having the control of nine, in ten parts. For this purpose Eldridge and Warner, the lessees of Fenwick, who had control of the remaining tenth, conveyed that portion (reserving only the rights of original purchasers from Fenwick) to Penn, Lawrie, and Lucas, and in consequence, these latter persons were put in a situation to make a general partition with Carteret.

The division of territory that had been made by the line laid down in the second grant from the Duke of York, was not now insisted upon. It gave an important advantage to Carteret, a fact however, that may not have been known to him, or to the Duke, at that time. Whether so or not, a desire was expressed by the Duke that the question of boundary should be opened anew, and an opportunity be given for the concurrence of the several parties that were now concerned, a course to which Carteret acceded.⁶

In pursuance of this design, a new boundary was agreed to, and the agreement was ratified and confirmed by an instrument which was called "An Indenture Quintipartite," taking its name from the number of persons engaged therein. These individuals were Sir George Carteret of the one part, and William Penn, Gawen Lawrie, Nicholas Lucas, and Edward Byllinge, (the last having only an equitable interest,) on the other part. By the "deed quintipartite" which was dated July 1st, 1676, the line of division was made to extend across the province, from Little Egg Harbor, to a point on the Delaware River in forty-one degrees of north latitude.

To the divisions separated by this line, the names of East and West New Jersey respectively, were applied, and this distinction continued to be recognized, until the charters of both were surrendered, and the two portions included together under a Royal government.

After the division above mentioned had been effected, Byllinge and his trustees reconveyed the share that had belonged to Fenwick, giving it to Eldridge and Warner in fee, and they were

⁶ Whitehead, p. 67.

thus admitted into the number of proprietors.⁷ The proceedings of his lessees were complained of by Fenwick, and he afterwards directly accused them, as well as Penn and his associates, of having concerted a plan to deprive him of his property and rights.⁸ This charge can hardly be sustained, yet it must be confessed that the appearances were such as to expose the parties to unfavorable imputations. Eldridge and Warner undoubtedly obtained an advantage which however, they may never have designed to use, and may not have used, to the injury of Fenwick.⁹

As an expedient for conducting the business of the province previous to the establishment of the projected government, provisional authority was given to three individuals, who were to act on behalf of the proprietors. Two of these persons, Richard Hartshorne, and Richard Guy, were residents in East Jersey, and the other, James Wasse, was sent specially from England. They were commissioned on the 18th of August, 1676, by Byllinge and his trustees, in conjunction with Eldridge and Warner.¹⁰ Full authority was given to them to act for their constituents, according to certain instructions. They were first to endeavour to remove the difficulties arising from the presence and the claims of Fenwick.¹¹ They were to get a meeting with him and his people, show the deed of partition with Carteret, and explain the proceedings that had taken place between the assignees of Byllinge, and Eldridge and Warner, and make a proposal for a general concurrence, so that the lands that had been purchased, might be divided according to the original agreement between

⁷ Mickle's Reminiscences, p. 30.

⁸ See Fenwick's Remonstrance and Declaration in Johnson's Salem, p. 38.

⁹ The acts of Eldridge and Warner are hardly accounted for by the ostensible reason; the re-conveyance to them, in fee, completely cut off the reversionary claim of Fenwick; but on the other hand the proceedings of Fenwick in entering the territory and selling lands as his own, after his conveyance, is not easily explained. The intentions of all these parties were probably just, but their business transactions became strangely confused. There must have been an *equitable intent* in their agreement that is not apparent in its general aspect.

¹⁰ Smith's New Jersey, p. 83.

¹¹ At this time Fenwick was still in the province, the order of Governor Andross for his arrest, not being given for some months afterwards.

Fenwick and Byllinge. But if the proffer of amity should not be accepted, then the true situation of Fenwick might be made known; the country might be informed that he had no power whatever over the persons or estates of any, having no authority to act, without the consent of Eldridge and Warner.

The Commissioners were authorized to purchase and take up lands, ninety parts for the use of William Penn, Gawen Lawrie, and Nicholas Lucas, and ten parts for John Eldridge and Edmund Warner.¹²

The efforts made by the Commissioners to effect an adjustment with the settlers at Salem, were not successful; Fenwick continued to assert his rights as proprietor, both in regard to property and government. The declaration which the Commissioners were authorized to make was therefore published in the province, and an attempt was made to survey the lands that had been previously purchased; Richard Hancock, who had been previously engaged in this service under the direction of Fenwick, being now employed by the Commissioners.¹ But the authority of these Commissioners was soon superseded by the introduction and establishment of the Proprietary government.

The power to institute government was one of the proprietary rights which was supposed to be equally disposable as property in land, and it had thus been conveyed to the present possessors of West New Jersey. Whatever objections might be made to the mode of transmission, none can be brought against the views or designs of the holders in regard to its use. The exercise of government indeed, had been a principal aim, but they had desired it, as means of security, and not of injustice; it had been sought for the purpose of shielding themselves and others, from oppression and wrong. It was not to be used as an instrument for their own elevation, but, as they declared, that they might "lay a foundation for after ages, to understand their liberty as men and as christians, that they may not be brought into bondage but by their own consent." The original scheme

¹ This was the proportion originally agreed upon between Fenwick and Byllinge. Nine parts to the latter, and one to the former.

¹² Johnson's Salem, p. 39.

was devised by Penn and his immediate co-adjutors, but it was afterwards submitted to others as they became concerned in the province, and received their approval and sanction. It was first promulgated on the 3d of March, 1676. It was called "The Concessions and Agreements of the Proprietors, Freeholders, and Inhabitants of the Province of West New Jersey, in America."

The concessions may be considered under two separate aspects: first, those general fundamental principles or conditions which formed the basis of government, and marked out its sphere, and secondly, those particular provisions by which the government itself was established, and its operations directed.

It was declared that the fundamental rights and privileges granted in the instrument, were to be regarded, and to continue, as the foundation of government; that they were fixed and unalterable, not to be revoked or changed at any time by the legislative authority, and that any person or persons who should designedly and wilfully excite a Legislative Assembly to any thing subversive of these fundamentals, should, if it be sufficiently proven against him, be proceeded against, as a traitor to the government. These "fundamentals" were to be read at the beginning and dissolving of each General Assembly, and were also to be read "in a solemn manner," four times in a year in every hall of justice within the province.

It was laid down in these fundamental conditions, that no man or number of men upon earth hath power or authority to rule over men's consciences in religious matters, and that no person or persons within the province, should be in any wise, or on any pretence, called in question or punished in his person, estate, or privilege, on account of his opinion, judgment, faith, or worship toward God in matters of religion.

That no proprietor, freeholder, or inhabitant of the province should be deprived or condemned of life, limb, liberty, or estate, or hurt in his privileges, freedoms, or franchises, without due trial and judgment passed by twelve good and lawful men of his neighbourhood.

That no person should be arrested or imprisoned (except in criminal and treasonable cases,) until personal summons setting forth the cause, should have been given, and sufficient time allowed

to make answer, and after trial, if any person condemned to imprisonment should solemnly declare and aver that he hath not any further goods or estate, and should bring three other persons "of honest reputation," who should declare in open court, that they believed the person condemned to have nothing wherewith to pay, he should be discharged from imprisonment.

That in all public courts of justice for the trial of causes, civil and criminal, all the inhabitants of the province might freely come into, and attend courts, and hear and be present, "that justice may not be done in a corner, nor in any covert manner, being intended and resolved, by the help of the Lord, and by these concessions and fundamentals, that all and every person and persons inhabiting this province, shall, as far as in us lies, be free from oppression and slavery."

The principles set forth in these declarations and provisions, were of the utmost importance; and their promulgation as fundamental conditions manifested a high and just sense of the value of civil and religious liberty, and true wisdom in securing it to every individual.

The executive authority of the government as established by the concessions, was to be lodged in the hands of Commissioners. These were to be appointed at first by the proprietors or a major part of them. They were to have power for the time, to purchase and direct the division of all lands heretofore purchased, or that should be hereafter purchased, according to the terms, and in the manner prescribed. The territories were to be divided into one hundred parts, or properties, and these subdivided into tenths, each one containing ten properties.

But upon further settlement of the province the Commissioners were to be chosen by the resident proprietors, freeholders, and inhabitants; they were to assemble on the 25th of March, 1680, and upon the same day of each year afterwards, at some public place, and elect by ballot, ten "honest and able men fit for government," who were to officiate as Commissioners for the year ensuing, and until others should be elected and appointed. The Commissioners so chosen were empowered to govern and order the affairs of the province according to the concessions, until a General Assembly should be chosen; after that time, the choice

and appointment of Commissioners devolved upon the General Assembly, but the number should continue the same.

The Commissioners were to superintend the execution of the laws, to see that the officers of the several courts established by law, performed their respective duties, and in case of delinquency, or an abuse of power, they might displace or punish the offender, as the nature of the offence might require. They might suspend the execution of any sentence passed by the courts, until the next meeting of the General Assembly.¹¹ They were to see that all lands that had been surveyed, and held and possessed for seven years, should not be subject to any re-survey, or alterations of bounds. They were to do all other things that might conduce to the safety, peace and well government of the province. But they were not to impose or suffer to be imposed, any tax, custom, subsidy, tollage, or assessment, upon any colour or pretence, other than such as should be imposed by the authority and consent of the General Assembly.

The legislative authority of the province was extremely simple in its constitution. So soon as the contemplated divisions in the province should be made, the proprietors, freeholders and inhabitants in each, were to meet on the 1st day of October in each and every year, and choose one proprietor or freeholder for each respective propriety in the province, the whole number of propries being one hundred, which body of deputies consisting of one hundred persons so chosen, should constitute the supreme Assembly, for one year. They were to meet in one house, were empowered to appoint their own times of meetings and adjournments from time to time, within the year, as they might think fit. They might determine the number of their own quorum, so that it be not less than one-half of the whole number. The votes of two-thirds of the members, either of the quorum or of the same proportion, if a larger number than a quorum were present, were to determine in all cases coming before the body.

The Assembly had power to enact all laws necessary to the well government of the province, provided that such enactments.

¹¹ To power of final power was lodged in the General Assembly.

should be, as near as might be, agreeable to the laws and customs of England. To order and prescribe as to the establishment of the several proprietary divisions, and to give names to each. To lay equal taxes and assessments, and to raise monies upon all lands or persons within the province for the support of government, apportioning the amount among the several divisions, in such a manner as should seem equal and just. It was also the province of the Assembly to constitute all courts, to prescribe the powers and jurisdictions of the same, as also the several officers belonging to each court, and their term of office, (which term however should not exceed one year, or two at the most,) with the salaries, fees and perquisites attached to each. But it was prescribed that in the courts, all civil and criminal causes should be decided by the verdict of twelve men of the neighbourhood, and that in every court, there should be three Justices or Commissioners who should sit with the twelve men of the neighbourhood, to assist them in point of law, but that the Justices should pronounce such judgement as they should receive from the said twelve men, in whom only it was said "the judgement resides." No person should be compelled to see any attorney or counsellor to plead his cause, but every one should be at liberty to plead his own cause, if he should choose.

Chief Justices, ambassadors, and all commissioners of the public seals and treasury, were to be chosen by the Assembly, but justices and constables, by the people.

But the Legislature was liable to several restrictions: beside the restraints that were contained in the fundamental conditions, there were others, to be applied to the several members. The electors were to give to their respective deputies or trustees, their instructions at large setting forth their grievances or wishes, and the deputies were to enter into a covenant under hand and seal, to engage to do nothing but what should tend to the service and behoof of the people, and in case of a breach of the covenant, the members might be questioned in that or the next Assembly, by any of the electors. The compensation of the deputies was not to be determined by themselves when met in Assembly, but was prescribed in advance. Each one was to be allowed one shilling per day during the time of sitting, that thereby, it was said "he might be known as a ser-

vant of the people;" and this allowance of one shilling per day was to be paid to each member by the proprietary division that had elected him.

Besides these general provisions, there were others, directing the course of proceeding in particular cases. One of these applied to the manner of freeing the lands from the Indian claims. When any land was to be taken up, before it should be surveyed, the Commissioners, or a major part of them were to appoint persons to visit the natives, acquaint them with the design and agree upon some compensation, and this agreement was to be taken in writing under their hands or seals, or in some other public manner. But no person should take up lands but by order from the Commissioners. It was also provided that in case any injury should be done to the natives in their persons or property, the Commissioners should take care that justice should be done, and plenary satisfaction be given, according to the nature of the case; and in all trials wherein the natives were concerned, the trial should be by six of the inhabitants and the same number of natives. Very full regulations were made in relation to registering deeds and other conveyances.

The purchasers of land were to pay one penny and a half an acre, to the Proprietors for what should be laid out in towns, and one penny the acre for what should be laid out elsewhere.

To these "concessions and agreements," one hundred and fifty-one names were subscribed.

In many respects the system of government just noticed is entitled to special attention. It was the first commencement of Quaker legislation, and may be truly considered as exhibiting something of the character and temper of the people from whom it proceeded. The most searching and critical inquirer cannot but confess, that with some defects, it yet possessed in its general features much that all must approve and commend. It was marked by the greatest liberality. The framers, as a proprietary body, retained no authority for themselves. "We put the power in the people," they said, and such was truly the case. No authority was to exist except such as was established by popular action and even this authority was to be cautiously given. No further restraints were imposed or allowed than were necessary for the

maintainance of order, and it may be, that at some points the boundary of government was so far extended, or lowered, as almost to jeopardize its safety. But the situation of the framers at the time rendered them more alive to the evils of oppression, than to the dangers of disorder. The great division of the executive power has been made a ground of objection; it has been imagined that a body composed of so large a number of members, and holding office for so short a period, would be incapable of harmonious and vigorous action.¹⁵ In a general view, such an opinion may be perfectly just. But it may yet be considered that in this particular case, the duties assigned to the executive body were not such as were calculated to create disunion, or to call for much promptitude or energy in action.

In the constitution of the legislative authority, the popular principle was carried to as great an extent as was possible under a government of the representative form. Perhaps it was carried to a greater extent than, under ordinary circumstances, would be considered necessary, or even advisable, but the experience of the projectors had impressed upon them the importance of making the fullest provision against an excess or abuse of power.

The provisions in relation to the judicial department were probably most liable to question; the term allowed for a continuance in office was scarcely sufficient to admit of a perfect acquaintance with the duties to be performed; with inexperienced judges, with juries authorized to determine the law as well as the facts, and without a permanent bar, the administration of justice could hardly be steadily and firmly conducted.

But notwithstanding the imperfections which it certainly contained, this instrument of government was in advance of any existing at the time; and in fact, in many particulars, was equal to any that has ever been framed. If somewhat lacking in vigor, it gave the fullest security to freedom; it gave free room and scope for individual effort and action, and the mind of man was completely enfranchised. The person of every citizen was made safe and property was placed entirely beyond the reach of arbitrary exaction.

¹⁵ Gordon's New Jersey, p. 37.

The differences between the West Jersey government and that existing at the same time in the eastern portion of the province, were important and obvious. In the latter the executive authority was entirely independent of the people. The legislative authority was also independent in part; the Governor and Council formed a part of the General Assembly, and being a distinct house had equal power with the popular branch. The Governor and Council had also the important authority of convening and proroguing the General Assembly; they had power also for the establishment of certain courts, and for the appointment of officers. In these, and other particulars, the government of East New Jersey was strongly distinguished from that of the western province. But the two cases were also different. The government of the eastern portion had emanated from individuals who were among the rulers of the English realm, and their work could hardly be expected fully to reflect the popular feeling, and especially that feeling which an experience of actual oppression, had excited. Beside this, the discontents and disturbances that had occurred in the province had led to a change in the government, and the introduction of more rigid conditions than had at first been imposed. Probably the government of the eastern portion would not have been accepted in the western, and it is equally probable, that the plan of the latter, would have been found, at the time, not suited to the former.

CHAPTER XI.

PROCEEDINGS IN WEST NEW JERSEY.

IN accordance with the design of the concessions, Commissioners were appointed by the proprietors to take charge of affairs in the province, and direct the proceedings preparatory to the settlement of the country, and the introduction of the projected government.¹ In the year 1677 they departed for the province. They were accompanied by a large number of settlers, most of them being members of the Society of Friends. The company arrived at New Castle on the 16th of August, and soon afterwards landed at the mouth of the Narriticon or Raccoon Creek, at a place where a few Swedes had settled and erected some dwellings.² The Commissioners themselves, had landed at another point, being desirous to visit New York and wait on Governor Andross. This visit was probably intended as a measure of policy in view of the violence which had been committed by Andross in the seizure and detention of Fenwick.³ It could have been no part of the design of the Commissioners to make any concession acknowledging the claim of Andross to authority in New Jersey; but they may have supposed that a frank explanation of their objects might conciliate the Governor, and ward off difficulty in future, and they were willing to pay respect to the Duke's commission.⁴ But it soon became apparent that something more than "respect" was demanded. So soon as the Commissioners had presented themselves and made

¹ There were nine commissioners now appointed—Thomas Olive, Robert Stacy, Benjamin Scott, Daniel Wills, John Kinsey, John Penford, Richard Guy, Joseph Helmsley, and Thomas Foulke.

² This was one of the ancient Swedish settlements on the Delaware, it was near the site of the present town of Swedesborough.

³ At this time Fenwick was detained as a prisoner in New York.

⁴ Smith's New Jersey.

known their intentions to Andross, he demanded, whether they had any warrant from the Duke of York in relation to the proposed attempt. They had none to produce; but they replied to the demand by setting forth at length the claims of the proprietors, showing that a conveyance had been made to them by Lord Berkely, one of the grantees of the Duke, and that this conveyance was believed to be sufficient and full, both in respect to property and authority in the province. But all this was little regarded by Andross. He insisted that his commission extended over the whole of the country, and declared that should he surrender it, without an order from his master, it would be at his peril, though he expressed a willingness to yield it up, without further delay, if they could show but "a line or two from the Duke."

The Commissioners attempted a remonstrance, but they were presently silenced by Andross, who pointed with some significance to his sword. In this manner an intimation was given of the Governor's determination to maintain the authority he claimed, and to do this, should it be necessary, by deeds, as well as by words. Further remonstrance or resistance seemed useless. But Andross finally proposed in order to enable the Commissioners to proceed in their purpose, that they should take a warrant from him, until a further agreement should be made. This proposal was at length accepted, the Commissioners preferring to proceed under such authority, rather than to incur the hazard of being wholly frustrated in their plans.⁵ These proceedings, together with the measures that had been previously taken in reference to Fenwick, were entirely sufficient to explain the intentions of the Duke of York in granting a commission to Andross within the bounds of New Jersey. It was clear, that notwithstanding the grants he had made, he was resolved to claim and to exercise authority, and the instrument he had chosen, was entirely disposed to second his wishes and designs.

Directly after the occurrences above mentioned, the Commissioners joined the body of settlers and proceeded in the discharge of the duties of their trust. They purchased from the natives three

⁵ It is stated that they took Magistrates' Commissions from Andross.

Smith's New Jersey, p. 93.

several portions of lands upon the Delaware, the whole reaching from the Assunpink on the north, to Oldman's Creek on the south; at the latter boundary they were brought to the borders of the territory that had already been purchased by Fenwick.⁶

At an early period the West Jersey Proprietors had entered into a contract or agreement with five individuals of the county of York, in England. In pursuance of this agreement, an article was inserted in the proprietary concessions, directing, that the Commissioners should grant unto the persons in question, or their lawful representatives, the privilege of choosing any one of the tenth parts or shares that should first be laid out. These persons or their representatives, were also to have privileges for building a town, and were to be allowed the liberty of choosing their own magistrates and officers, for executing the laws according to the concessions, within the said town.

At a subsequent period, a company of persons in London purchased a patent for another tenth or share. Among the individuals who were now in the province were persons authorized to act on behalf of these companies, and selections of lands were accordingly made. The representatives of the Yorkshire interest, Helmesly, Emley and Stacy, made choice of the land extending from the Rankokus to the Falls of Delaware, and this portion was accordingly assigned to them by the Commissioners as the *first tenth*. The agents of the London Company, Penford, Olive, Wills and Scott, chose a portion of territory lower down the Delaware, in the vicinity of Arwamus and Timber Creek; but finally an agreement was entered into by these two companies for a nearer union. They agreed to act together in settling a town, and a place was selected for the purpose, to which the name Beverly was given, which afterwards was changed to Bridlington, and finally to Burlington, which last it still continues to bear. In consequence of this agreement, the London settlers took lands nearer to the place of the principal settlement. Two tenths were thus appropriated and entered upon, and the number of settlers therein was

⁶ For the particulars in relation to the several purchases from the natives at this time, see Smith's New Jersey, p. 95, and Mickle's Reminiscences, p. 33.

soon increased by the coming of several companies from England.⁷

The general ordering of all affairs in the province was in the hands of the Commissioners; they were authorized to lay out the lands included in the different *tenths*, into ten proprietries and to allot them to particular purchasers.

They were to appoint a Surveyor in case no such appointment had been made by the Proprietors, and in like manner a Register or Recorder, and were authorized to determine the rates and fees of these officers for their respective services. Particular regulations were given in the concessions as to the mode of apportioning lands. The quantity was determined by the period of the applicants arrival, advantages being allowed to early applicants, and also according to the number, age, and condition of the persons that were brought to the province.

No authority was given to the Commissioners for making new regulations or laws, they were strictly to pursue the course laid down in the concessions. The special privileges granted to the Yorkshire settlers enabled them to select and appoint their own magistrates and officers, but these too, were to be governed in all affairs by the laws of the concessions. No authority was entrusted to any which could in any wise conflict with the powers that were to be exercised by the General Assembly of the province.⁸ The powers and duties assigned to the several officers, were simply of an administrative character. By the settlers in the first and second *tenths*, the prescribed conditions appear to have been fully observed. But such was not entirely the case among the people at Salem. In 1678, Fenwick, having been liberated from confinement in New York, returned to the province and again assumed the principal control. He proceeded to make choice of officers for his colony; appointing Samuel Hedge, Surveyor General; James Nevill, Secretary, and Samuel Winder, Register, and declared that he would nominate and appoint other officers at his leisure, and demanded in his Majesty's name "the superiority, and the submission of the people as his right and propriety."⁹

Smith's New Jersey, p. 102.

⁷ In East Jersey the privileges of the special charters had been insisted upon in opposition to the authority of the General Assembly.

⁸ Cantwell's Declaration in New Castle Records.

Directly afterwards, a proclamation was issued in the name of "John Fenwick, Esq., Lord or Chief Proprietor of the said province, and in particular of Fenwick's colony within the same." In this all persons, Dutch, French and English, who had settled themselves within the limits of said colony without applying to, or receiving any warrant from lawful authority, were required to appear before Fenwick, within one month, and show their order or warrant for "their pretended titles." Nearly at the same time, a council, consisting of the officers before mentioned, and other persons of "Fenwick's Colony," was held, and regulations were adopted for surveying and setting forth lands according to a method agreed upon, and which was supposed to be suited to the interests of the settlers.¹⁰ Those proceedings were an assumption of independent authority, and in direct opposition to the proprietary concessions.

It does not appear, however, that any attempt was made by the Commissioners at that time, to extend their authority within the limits of the territory that was claimed by Fenwick, or to interfere in any way with his doings. A wise forbearance was exercised.

But if Fenwick escaped from all interference from those who had a right to inquire concerning his proceedings, he was less fortunate with respect to those who had no right. His resumption of authority upon his return to the province brought him again into collision with the authorities at New Castle. He had declared that no one who should pay the customs imposed by Governor Andross should be permitted to enjoy lands within his jurisdiction.

On the 9th of May, 1678, a communication was sent to New York from the justices of the court at New Castle, "concerning the new alterations made by Major John Fenwick," with a request that a speedy order might be given concerning the same. At that time Governor Andross was absent from his province, not having yet returned from England whither he had gone in the year preceding, but his Secretary and Council, who received the communication from New Castle, gave orders that notice should be given to Major Fenwick to forbear from the exercise of any

¹⁰ Johnson's Salem, p. 23.

authority on Delaware River, according to his parole which (it was said,) had been formerly given, and that should he persist, he was again to be seized and sent to New York. The "notice" was transmitted to Fenwick, but he replied that he was bound to give an account of his government to no one but the King of England, and that he only desired to enjoy that which was his just and undoubted right.

A still more urgent direction to the same effect as the former was soon afterwards transmitted from the Council at New York, to which an answer was returned on the 24th of July, 1678, informing the Council, that Fenwick had already been taken to New Castle, and that the authorities there were only awaiting a fit opportunity to send him to New York.¹¹ Thus another outrage was committed within the limits of New Jersey, by direction of the officers acting under the commission of the Duke of York.

Further difficulties from the same source were soon to arise. The population of West Jersey was now rapidly increasing by the frequent arrival of new companies of settlers. All these companies coming by the Delaware, were subjected at their first arrival to a demand for customs upon all imported goods, which customs the authorities at New York had ordered to be collected at Hoarkill; all exports were also liable to the same demand.

As has been stated, the customs in question were first imposed by Governor Lovelace, but they were continued with some slight alteration by Andross, and under his direction the payment had been rigidly enforced; no exemption was permitted "to the smallest vessel, boat or person." This demand was so entirely in opposition to those immunities which the people of this province had expected to enjoy, and which they had a right to enjoy, that it could not be quietly acquiesced in. It has been seen that Fenwick objected to, and opposed it, and it was the cause of dissatisfaction and complaint with all the settlers in the province. Instead of the full enjoyment of property under the protection of laws and institutions of their own, they were subjected to the arbitrary exactions of a government in which they had no interest or concern whatever. They were reduced to a merely tributary state. The

question involved in such a demand was of too much importance to the interests and liberties of the settlers to be allowed to remain long undecided.

The proprietors in England made frequent and urgent representations to the Duke of York, upon the subject, and at length, to escape from importunity, or from a transient regard to the demands of justice, the Duke was induced to appoint Commissioners to hear and make report in the case. The Commissioners who were appointed for this purpose, referred the matter, with the consent, or by the request of the Duke, to the decision of Sir William Jones. The defence of the rights of the colonists was made by the proprietors, and they maintained their cause with signal ability.¹² The case was one that admitted of some scope of argumentation, as it properly included the extent of the royal prerogative, as well as the particular exercise of power which was the subject of present complaint.

The general power of regulating duties and imposts had never been granted to the English King, on the contrary it had been expressly and repeatedly denied. By one of the ancient statutes of the realm it was prescribed, that no tax or impost should be levied without the consent of the Lords and Commons. And in a later statute it was declared, that the King promises to take *no customs* from merchants without the assent of the realm, saving the customs on wool, skins, and leather, *formerly granted*. The continued attempts of Charles the First to take the property of his people without the authority and assent of Parliament, had been one of the principal causes that led to the loss of his throne. It had become a settled principle of English law that the King had no right of himself, within his hereditary domains, to impose any tax or custom whatever. Hence there is no other point to be considered in connexion with the present case than whether this limitation upon the King's prerogative extended into colonies, as well as through the ancient portion of the British realm. Lord Holt declared that the

¹² "The argument of the Proprietors was addressed "to those of the Duke's Commissioners whom he has ordered to hear and make report to him concerning the customs demanded in West New Jersey, in America, by his Governor of New York."

law of England did not extend to Virginia; "*her* law is what the King pleases."¹³ But this doctrine has not been sustained, and is in direct opposition to the general spirit of the English laws. The rights and franchises of Englishmen were not to be given or withheld at the discretion of the King. By his own prerogative he might institute government in new lands, but the government so established must be in accordance with the laws and customs of the kingdom. In the most distant places the immunities that belonged to English subjects might be claimed and enjoyed, and among the most important of these immunities was an exemption from all taxation, except such as they should assent to. And if the King himself had no right to impose taxes or imposts in any part of his dominions, neither could any other, in virtue of a grant from him, come to the possession of such a right. Whatsoever grant the King might make, no tax could be laid but by the assent of the people themselves.

If these principles be admitted, it will follow that the Duke of York, and of consequence his subordinates, were without any authority to warrant the imposition of customs, in the case in question. This view was clearly perceived by the proprietors and was strongly set forth by them in the representation they made. They urged that the constitution and government of England gave no support to the authority that was here assumed, it being a fundamental law that the King cannot justly take his subject's goods, without their consent; this, they said, need not be proved, it is an acknowledged principle, "*'tis jus indigene, an home born right, declared to be law by divers statutes.*" And they represented that as Englishmen they were entitled to enjoy this right, not having lost any part of their liberty by leaving the country, and furthermore, that in the King's grant to the Duke of York, the power of the latter was expressly restricted, it being declared that the laws and ordinances he might establish, were not to be contrary to the laws, statutes, and ordinances of the realm of England. But the remonstrants dwelt with no less force upon another point. They not only denied to the Duke the power in question, inasmuch as the King *had not given* and *could not*

¹³ Salkeld, p. 66C. Particular statutes were not supposed to extend to the colonies, unless they were named, but general rights were common to both countries.

give it to him, but they also insisted that the government of the province had now been surrendered into other hands. That the Duke for a competent sum of money paid him by Lord John Berkely and Sir George Carteret, granted and sold unto them the province of New Jersey, and that he conveyed it to them in as full and ample a manner, as he had himself received it from the King. And that Lord Berkely and Sir George Carteret had made certain concessions containing a model of government, and that many persons went there and planted, and the said government was established and administered with the knowledge of the Duke of York, and without question from any. With a knowledge of these facts, and also upon a presumption that neither Lord Berkely or Sir George Carteret would attempt any thing they were not properly authorized to do, the present proprietors, as they said, had agreed with Lord Berkely for his portion of the province, and that in the conveyance from him, powers of government were expressly granted. Without this they said, nothing could have induced us to purchase, "because, to all prudent men the government of a place is more inviting than the soil." They were not desirous of power, but of safety, not only for themselves, but for others, and that their purpose had been to assure people of an easy and safe government, both in respect to their spiritual and worldly concerns. That they had sold lands in the province to some hundreds of honest and industrious people who had transplanted themselves to the country, and that upon their arrival they had been met with a demand for custom of five per cent. upon the goods they carried. This they declared was a great grievance, for which they asked redress, and redress was asked "not from a burden only, with respect to the way of levying it, or any circumstances made hard by the irregularity of the officers, but as a wrong." For, they urged, no such tax was reserved in the Duke's conveyances, and it was therefore a new condition, a surprise upon the other party. To lose the right of making laws for themselves would be entirely to change their situation, it would be in effect to sell, or rather to resign themselves to another, and that for nothing. Besides, though by all governments custom is laid upon trade, this upon planting, is unprecedented. Had they brought commodities to the province to sell, made a profit out of them, and re-

turned to the advantage of the trader, there might be some color or pretence for the exaction, but to require and force customs from persons coming to their property, "their own terra firma, their habitations, in short, for coming home," was without a parallel. And furthermore, there could be no end to this, for since they were by this precedent assessed without any law, and thereby excluded from *their English right of common assent to taxes*, there could be no security for any thing they possessed, nothing could be called their own, they were merely tenants at will, and not only for the soil, but for their personal estates.

It was urged, they said, that the province was a conquered country, and that the King being the conqueror, hath power to make laws and raise money, and that this power the King hath vested in the Duke; but they said the conquest indeed has been made, but for whom? Did the King conquer for himself or for his kingdom and people, and were his subjects who should inhabit there, to be treated as slaves because the country had been won from their enemies? "Did Alexander conquer alone, or Cæsar beat by himself?"¹⁴

"This part of the argument of the remonstrants, involves a point of English Constitutional law of no little nicety, and upon which authorities are by no means agreed. It has been laid down as a principle by some, that if the King comes to a kingdom by conquest, he may change and alter the laws of the kingdom, but if he comes to it by title and descent, he cannot alter the laws of himself, without the consent of the Parliament. In Cowper's Reports, (page 211,) a case is mentioned which had been referred to Sir Philip Yorke and Sir Clement Wearge, upon which they reported "that if Jamaica was still to be considered a *conquered island*, the King had a right to *levy taxes* upon the inhabitants, but if it was to be considered in the same light as other colonies, no tax could be imposed on the inhabitants *but by an Assembly of the island*, or by an *act of Parliament*. But it was also laid down that if the King by a proclamation or grant should enter into any engagement, conceding a different form of government to a conquered country, he would afterwards be precluded from the exercise of his peculiar prerogative. To apply these principles to the case under notice. If it be conceded that after the second subjugation of the Dutch, the country was to be considered merely as conquered territory (a point however not determined) it would follow, according to principle just stated, that the King had a right to impose laws at his own pleasure, and even upon natives of England who might reside there. *The King*

In addition to these arguments founded upon the law and the equity of the case, certain prudential considerations were also presented; the effect which the conduct of the Duke might have upon the people of England, was brought into view. If the Duke should insist upon the demand that had been made, it might be considered as showing an inclination to an arbitrary exercise of power, but its abandonment, on the contrary, would give evidence of just and liberal intentions, and a desire to promote the prosperity of the kingdom, and the happiness and welfare of the English people.

This document, prepared by a few Quakers, was one of the highest importance. It was important not only as a defence of the rights of West Jersey, but also as an assertion of principles which bore upon the interests of all the American colonies.

The bold defence of the immunities of English subjects, particularly of their right to exemption from all taxes to which they had not assented, may have had aided materially in fixing those opinions and resolutions, which finally led to American independence.

After full consideration of the matters submitted to him, a decision was given by Sir William Jones. This decision was given in a formal document bearing date July 28th, 1680. It set forth "that, having heard what hath been insisted on for his Royal Highness, to make good the legality of the demand of five per cent. from the inhabitants of New Jersey, I am not satisfied (by any thing I have yet heard) that the Duke can demand that, or any other duty from the inhabitants of these lands. And that which makes the case the stronger against his Royal Highness is, that these inhabitants claim under a grant from his Royal High-

then, under these circumstances, might have imposed the tax in question. But subsequent to the conquest from the Dutch he had made a grant containing certain conditions. He had conveyed the country to the Duke of York, with powers of government, but the condition was annexed that the regulations and ordinances to be made, should not be contrary to, but as near as conveniently might be, agreeable to the *Laws, statutes, and government of the realm of England*. By this conveyance the general laws of the kingdom were brought into force in the country in question, and of consequence the people were entitled to the same immunities as other subjects of England.

ness to the Lord Berkely and Sir George Carteret, in which grant there is no reservation of any profit, or so much as jurisdiction."

It required a strong, just, and courageous mind to pronounce a judgement so directly opposed to the views and claims of the principal persons of the British court, but the decision was sustained, and was assented to by the Duke himself, and shortly afterwards he entirely relinquished his claim. On the 6th of August, 1680, his Royal Highness gave a direction to Sir John Werden, his Secretary, to bring in a deed of confirmation or release, in order the more formally to convey the province of West New Jersey to Byllinge and the rest of the Proprietors. Accordingly, on the day above mentioned, a deed was executed in which a conveyance was made from his Royal Highness the Duke of York, to Edward Byllinge, William Penn, Gawen Lawrie, Nicholas Lucas, John Eldridge, and Edmund Warner. In this instrument the Duke transferred to the persons above mentioned, all the territory of the province of West New Jersey, "and all the estate, right, title, interest, reversion, remainder, claim and demand whatever, as well in law as in equity, of him the said James the Duke of York, of, into, and out of the same, or any part or parcel of the same."

Yet this conveyance was made in such form as afforded a sort of cover to the claim which the Duke had formerly made to a right of jurisdiction. His pretension had been based upon the principle that jurisdiction and ownership in the province were not only separable, but had been actually separated, he retaining the former in his own hands. This view or pretence was maintained even in the execution of the present grant, for though both property and jurisdiction were entirely resigned, they were not surrendered to the same individuals. The deed gave the *property* to the persons just named, but it assigned the powers of government to Edward Byllinge alone. It was said that "his Royal Highness doth by these presents, give, grant, assign, and transfer over unto the said Edward Byllinge, all and every such the same *powers, authorities, jurisdictions, governments* and other matters and things whatever, which by the said recited letters patent (from the King) or either of them, are and were granted or intended to be granted, to be exercised by his said Royal Highness, his heirs, assigns, deputies, officers, or agents, in, upon or in relation unto the said

premises hereby confirmed, or intended to be confirmed, and every of them, in case the same were now in the actual seizen of his said Royal Highness: to be held, enjoyed, exercised and executed by him, the *said Edward Byllinge, his heirs and assigns*, and by his deputy officers, agents and commissioners, as fully and amply to all intents, constructions, and purposes as his said Royal Highness, or his heirs might, could, or ought to hold, enjoy, use, or exercise the same.¹⁵

Whether this special conveyance to Byllinge was made in compliance with the wishes of the Duke, in order that the grant which he could no longer withhold, might be made to accord in some measure with his former pretensions and acts, or whether Byllinge himself had desired and secured it as a personal advantage, cannot with any certainty now be determined. But Byllinge was put thereby in a strange position, in regard to the other proprietors, and the people of the province. He had been a party to the concessions in which he, with others, had granted to the people at large the right of choosing their officers, both legislative and executive, yet now, in so far as the new grant was operative, he alone become possessed of the powers of government. It was in effect a recal of his previous agreement or grant. This difficulty or inconsistency indeed, he might have wholly removed by confirming the concessions anew. But this was not done, and in consequence, the government of West New Jersey assumed from this period a different form, though, as will be seen, the spirit of the concessions was essentially preserved.

Before proceeding further, it may be proper to recur to East New Jersey, and trace the progress of events in that province.

¹⁵ Grants and Concessions, p. 418.

CHAPTER XII.

GOVERNMENT IN EAST NEW JERSEY—RELEASE OF THE DUKE OF YORK—GOVERNMENT AFTER THE RELEASE—SALE OF THE PROVINCE—GOVERNMENT UNDER THE NEW PROPRIETORS.

It has already been stated that on the 1st of July, 1676, the province of New Jersey was divided into two portions, to be called respectively, East and West New Jersey.

At that time, as before noticed, Governor Carteret had returned and had entered upon the discharge of his duties, and a General Assembly having been convened, a number of enactments had been made suited to the conditions of affairs at the time.

Early in 1676, the General Assembly again met, and several acts, but most of them having a relation to individual interests, were passed. One enactment was designed to secure the attendance of those who had been elected as Deputies, it being set forth "that the country is dammified that the Deputies have not attended the writs whereby they were summoned to appear, at the time and place appointed." It was therefore provided that whosoever should not appear, should pay as a fine, ten shillings for each day of his absence; and to facilitate the attendance of the Deputies, it was directed, that they should have power to press "any vessel, horses or men" in aid of their passage. An enactment was made providing for the Governor's salary, directing that an assessment should be made of two shillings per head for every male within the province from fourteen years old and upwards. At an adjourned session which was held at Woodbridge, the compensation for the members of Assembly was determined; during the time of their assembling together, sitting, and returning home, the Governor was to receive four shillings a day, each member of the Council three shillings, and the Representatives also three shillings each.

Government in East Jersey seemed now to be established, the heats and discontents that had formerly prevailed, if not entirely removed were not openly manifested. But at an early period a difficulty arose from another quarter.

The arrival of Edmund Andross as Governor under the Duke of York, together with the nature and extent of his commission, have already been noticed. The interference of Andross in East Jersey was carried even further than in the western portion of the province, and was attended with circumstances of no less aggravation.

Early attempts were made for the collection of those customs which his Royal Highness had thought proper to establish throughout his territory, and William Dyre, the collector of the Duke's revenues in New York, was appointed to collect the customs in New Jersey. These attempts were made in the directest manner. In West Jersey the collection had been actually made within the limits of territory that was clearly and exclusively within the jurisdiction of Andross, but a further advance was made in the other part of the province.¹ The province was entered upon and the regulations that were established by its proper authorities, were opposed or disregarded.

Governor Carteret being desirous to awaken a spirit of commercial enterprise, had adopted measures for opening a port within his province, and some vessels had been entered and cleared at Elizabethtown. But this proceeding was opposed by Andross; he insisted that it was in direct opposition to the powers that had been given to him, and to the rights and interests of the Duke of York, and his superior authority enabled him to carry out his designs, and to frustrate the efforts that were made in the neighboring province. In these pretensions and measures Andross was fully supported by the Duke, his master. Express authority was given by the latter, approving and confirming the acts of his subordinate. The Duke was desirous to avoid a direct collision with Sir George Carteret, the proprietor of the province, (whom

¹ On the Delaware the collections had been made at Hoar-Kill, or at New Castle, though all vessels entering the river were compelled to submit to the demand.

he held in especial favor) but still was in no wise disposed to relinquish his claims.²

The growing hostility between Carteret and Andross was allayed for a time, by the departure of the latter for England. It is stated, that before he embarked from New York "he went to take leave of Governor Carteret in the Jerseys," a visit which it is hardly to be supposed was entirely prompted by a feeling of amity; a desire to inform himself of the state of affairs in the province by personal remark, was probably considered an object of more importance by him, than an observance of the forms of courtesy.³

Instructions were given to Andross, in England, by which the period for the demand of customs was limited; it was only to continue for three years more. But as the exaction had never been submitted to, even in New York, but with the greatest reluctance, the present concession gave little satisfaction, and the continuance of the demand in New Jersey, was productive of much irritation.

In 1679, Governor Carteret issued a proclamation declaring Amboy to be a free port to all vessels trading to East Jersey, and in consequence of this permission, a trader from Barbadoes en-

² In a despatch from Sir John Werden, the Duke's Secretary, to Governor Andross, dated August 31st, 1676, the following appears:—"I add thus much further in relation to Sir George Carteret's colony of New Jersey, it is that I have acquainted his Royal Highness with what Mr. Dyre wrote to me about his little bickerings with Captain Carteret for not letting a present pass, &c. And though small matters are hardly worth notice, especially where Sir George Carteret himself is concerned, (for whom the Duke hath much esteem and regard,) I do not find that the Duke is at all inclined to let go any part of his prerogative which you and your predecessors have all along constantly asserted on his behalf; and so, though at present in regard to Sir George Carteret we soften things all we may, not to disturb his choler (for in truth the passion of his inferior officers so far affects him as to put him on demands which he hath no color or right to,) I verily believe that should his foot chance to slip, those who succeed him must be content with less civility than we choose to show him on this point, since that we should exercise that just authority, his Royal Highness hath without such reserves, as though but intended as favors now may if confirmed, redound too much to the prejudice of your colony."

³ Whitehead's *New Jersey*, p. 70.

tered his vessel soon afterwards, at that place. But information of the fact being given to Andross, he despatched his messengers with orders to take possession of the vessel and bring her to New York, which being done, he compelled the master to pay duties at that place. Not long subsequent to this proceeding, and probably in consequence thereof, the Assembly of East Jersey enacted a law that the sum of one hundred and fifty pounds should be raised for the encouragement of any vessel to come into the province to trade and traffic, and that if any vessel should come, and after entering and clearing in a proper manner, should be arrested and detained by the Government of New York, for the cause of trading in New Jersey, that the above mentioned sum should be used for the reparation of the loss and injury sustained by such arrest and detention.⁴ This measure, though it might tend to the encouragement of trade, was little calculated to secure the province from the injurious demands and acts of the neighboring government, and on this account, as may be supposed, the law itself was soon afterwards repealed. But in fact, the demands of Governor Andross had now become such, that nothing could be expected from any expedients of a temporary kind; the very existence of the government was threatened.

In March, 1679, Andross directed a communication to Governor Carteret declaring that the acts of the latter being performed without legal authority, tended to the disturbance of his Majesty's subjects, and that he was therefore required to cease from the exercise of any authority, until his powers should be properly acknowledged at New York.⁵ Such a communication rendered it necessary that some vigorous measures should at once be taken. Governor Carteret called a meeting of his Council, and also "of the most eminent part of the country," and after full consultation, replied to the demand that had been made. He asserted that his authority in the province was not founded upon any presumption or pretence, but upon a grant from his Royal Highness, and the commands of his Majesty, as well as long and peaceable possession, and that he, and his Council and the people felt bound to the government of Sir George Carteret, and were resolved to

⁴ Grants and Concessions, p. 151.

⁵ Grants and Concessions, p. 673.

maintain it, and that if force should be resorted to, they would defend themselves and their families to the best of their ability, and if blood should be shed, it would be contrary to their desires, and a just and righteous God would require it at the hands of those who were the cause thereof. But before this reply was received by Andross, he had issued a proclamation intended to dissolve the Government of Carteret; he required that all persons should submit to him as the representative of the King's authority, and represented the proprietary claims to power as entitled to no attention whatever, and all persons were warned from abetting, assisting or observing the same.⁶ In return, Governor Carteret asserted and proclaimed that *his* authority had been established in pursuance of his Majesty's permission and command, and that without the same command, it should not be resigned, and that the people of the province were resolved to live and die with the name of true subjects, and not traitors.

Nearly at this period Sir George Carteret, the proprietor of East New Jersey, died, and by his will his province was devised to trustees to be sold for the benefit of his creditors. His widow Lady Elizabeth Carteret, was left executrix of his estate, and guardian to his grand-son, and heir. Edward Earl of Sandwich, John Earl of Bath, Hon. Bernard Granville, Sir Thomas Crew, Sir Robert Atkins and Edward Atkins, Esq., were the trustees. But the death of the proprietor was followed by no immediate change in the state or management of affairs in the province.

Before proceeding to further extremities, Governor Andross resolved upon visiting East Jersey in person, to make a full explanation of his rights and powers, and to demand a surrender of the government. Information of this design was given to Carteret, and he, expecting a hostile, rather than a peaceful visit, was prepared for such an emergency; but upon finding that Andross was not attended by any "offensive forces," he was received with proper civility.⁷ Andross entered at once upon the business in hand; he produced and displayed the letters patent from the King, the grant to the Duke of York, and the commission of the latter to himself. A similar display of authority was made by Carteret.

⁶ Grants and Concessions, p. 675.

⁷ Grants and Concessions, p. 677.

Nothing could be gained by an exhibition of claims that were already perfectly known, and when each of the parties was fully resolved, and accordingly this attempt to decide the matter "rather by argument than arms," was found entirely to fail. Andross left the province, having been courteously entertained and dismissed by Carteret. But proceedings of a different character were soon to follow.

On the 30th of April, 1680, Andross despatched an armed force with orders to enter the province, to seize upon Carteret and carry him to New York, and the order was executed with circumstances of much aggravation. The same outrage that had been twice committed in West Jersey in the case of Fenwick, was thus repeated in East Jersey upon the person of Carteret. The Governor was detained at New York as a prisoner, until the 27th of May, when a court was convened for his trial. He was charged with having "riotously and routesly," with force and arms, endeavored to maintain and exercise jurisdiction and government over his Majesty's subjects, within the bounds of his Majesty's letters patent granted to his Royal Highness. Carteret at first protested against the authority of the court, and demanded his liberty, on parole, to appear when the King should command it who he declared "was the proper decider of this matter;" but afterwards the protest was withdrawn and the defence of the accused was made upon the merits of the case. Carteret acknowledged that he had exercised government, and that he had refused to resign it, but he asserted that he had been placed in the government of New Jersey, having been commissioned as Governor thereof, by power derived from his Majesty, and that his Majesty had also given his command to the people, to be obedient to the government established by Sir George Carteret, and that he did not dare to deliver it up without a special command from the King. He also submitted documentary evidence to substantiate his declarations. The defence was considered sufficient, and a verdict of acquittal was rendered. But, although Andross had caused a court to be convened and a jury empaneled, he was resolved that his own decision should be given. He refused to receive the verdict, and ordered the jury again to retire; once and again was this repeated, the jury remaining firm, and the

Governor being resolved to reduce them to submission. Finally the verdict was allowed to stand, but the court declared their opinion and gave judgement, that if Carteret should go again to New Jersey, he should give security or an "engagement" not to assume any authority or jurisdiction there, either military or civil. This, in effect, was an imposition of punishment, though, according to the verdict of the jury, no offence whatever had been committed.

Governor Carteret having thus been removed, an attempt was made by Andross to obtain possession of the reins of authority. He appeared at the General Assembly which convened on the 2d of June, 1680. He acquainted the Assembly that they were met for the "service of the King and the country," and informed them that with a view to a proper exercise of their duties, he had brought the King's letters patents under the great seal of England to his Royal Highness the Duke of York, and also the Duke's commission to himself, and these he intimated were the ground of authority upon which they were in future to act. He recommended that an act confirming all former judicial proceedings should be passed, and also offered for their acceptance a body of laws that had proceeded from the Assembly of New York, adding, that if "any small matters were wanting," they might afterwards be supplied.

The Assembly replied with boldness though with "due respects to his Majesty's letters patents." They stated that as the representatives of the freeholders of the province, they did not dare to grant his Majesty's letters patents though under the great seal of England, to be their rule, for that the great charter of England was the only rule, privilege, and safety of every free born Englishman. They said that what they had formerly done had been in obedience to the authority then established, that things done according to law needed no confirmation, and they had no power to tie any man's hands from obtaining his just privileges and rights.^s

^s By "a confirmation of former judicial proceedings," Andross seems to have had particularly in view an approval by the Assembly of the province, of the action of the court in the case of Carteret, and with an understanding of the design, the Assembly refused to do any thing which should impede the endeavours of Carteret to recover his authority.

They also mentioned that they supposed their own laws to be more fitting and suitable for the province. They also, in apprehension that an attempt might be made to abolish the legislative authority, made a declaration that the people of the province were entitled to the enjoyment of all the rights allowed to them in the concessions, among which was that of electing Deputies to an Assembly of their own, where such laws might be enacted as should be thought necessary. They also made an enactment confirming the laws passed at a previous session of the Assembly, and this confirmation, together with the law book of the province, was presented to Andross and his Council.⁹ The firmness of the Assembly completely defeated the designs of Andross.

During this period Governor Carteret had made application to Lady Elizabeth Carteret, the executrix of Sir George, and to the other individuals concerned, in order that he might be reinstated in his rights and powers.

In September, 1680, a communication was received from Lady Elizabeth, containing an absolute command not to take notice of any commissions, warrants or orders from Sir Edmund Andross. She also directed, that an account of the charges and damages sustained by the province in consequence of the usurpation of Andross, should be drawn up, for that his Royal Highness the Duke of York, upon being informed of the acts of his deputy, had denied that he ever had authority from him to perform such acts,¹⁰ on the contrary, that his Royal Highness would not derogate in the least from what he had formerly granted to Sir George Carteret. Lady Elizabeth also engaged that the authorities of the province should be continued and sustained, and warned all persons from obeying or abetting in any proceedings ordered by Andross or by officers of his appointment. On the part of Andross further proceedings were arrested by a communication from the Duke, the nature of which will presently appear.

It has been seen that the proprietors and people of West New Jersey had made a successful defence against the claims of the

⁹ Grants and Concessions, p. 683.

¹⁰ Such a declaration from the Duke was in direct contradiction to others he had made, but his course in relation to New Jersey was full of inconsistencies.

like in that province, and that a deed was executed by which all the rights and powers of his Royal Highness were surrendered to others. The situation of East New Jersey in reference to the claims of the Duke was entirely the same as in the other part of the province, and hence a grant of one was necessarily followed by a similar release of the other. Accordingly on the 6th of September, 1680, the Duke gave an order to Sir John Churchill, his Attorney General, and Sir George Jeffrys, his Solicitor General, directing them to prepare an instrument similar to that which had been executed to Edward Byllinge and others, in order that he might release and confirm the moiety of New Jersey, called East New Jersey, unto Sir George Carteret, the heir of Sir George Carteret (lately deceased.)¹¹ The fact that this release had been made, was communicated to Governor Andross by Sir John Warden, the Duke's Secretary, in a letter bearing date the 6th of November, 1680.

Governor Andross himself was now placed in a situation of difficulty. His proceedings in New Jersey had been disavowed by the Duke, and his course, not only in this province, but also in New York, had been such as to occasion much dissatisfaction. Some distrust too, seems to have been excited in the mind of the Duke as to the faithfulness or discretion of his deputy, for at this time John Lewen had been sent out as a commissioner to examine into the condition of the province, and to ascertain the amount of revenue. In obedience to a command or intimation from the Duke, Andross soon afterwards returned to England and there an investigation concerning his conduct was entered upon. But the subtle deputy succeeded in removing all suspicion, and was presently restored to his master's confidence. He did not return to his former situation, but at a subsequent period was advanced to a post of far higher importance.

Andross had left as his representative in New York, Anthony Brockholst, the President of the Council, and this officer seems to have partaken in a large degree of the spirit of his principal. To him Governor Carteret, who had now resumed his place and

¹¹ Whitehead, note, p. 192.

authority, directed some of the papers he had received in relation to the recent changes in the state of affairs.

On the 26th of July, 1681, Breckholst addressed a communication to Carteret, in reply, in which he acknowledged the receipt of the papers. But he observed at the time, that he did not find in them any thing to authorize the assumption of authority in New Jersey, and he required that Carteret should desist from acting in any public capacity until he should show a proper warrant, according to the orders and resolves of the court at New York, and according to his own parole. Such a demand subsequent to the full release of the province, and the consequent acknowledgement of Carteret's authority, was truly extraordinary. Carteret replied that he had sufficient power to act as Governor of East New Jersey, and that he was under no more obligation to account to the authorities of New York, than they were to exhibit a warrant to him.

Soon afterwards the General Assembly of East New Jersey was convened, and amongst other measures for the settlement of the province, it was unanimously voted, that the proceedings of Sir Edmund Andross and his abettors against the government, were altogether illegal. This was the last act in this protracted contest. The whole of New Jersey was released from the Duke of York, and all the claims that had been urged by him, or on his behalf, were entirely abandoned for the time, though, as will be seen, they were afterwards renewed in a different form.

It is not easy, even with the most careful review, entirely to understand or explain the course of the Duke. It might be supposed that he really conceived that a claim had been retained, by virtue of which he might exercise authority within the limits of the province. But the question of right in the case, is contained in so narrow a compass, and is so plain and open to view, that it seems scarcely possible that any individual of common capacity in judging, should have failed to discern it.

The Duke had received and held his American possessions as a Proprietary Lord or Governor. He held authority in connexion with property. The possession of territory was made the basis of power. In after transactions it is true, the two might be separated, yet without a special stipulation to the contrary, the ac-

quisition of the property, which was the basis, would carry with it the possession of every incidental advantage. The Proprietary Lord might make reservations or conditions in his own favor, but without this, jurisdiction would be conveyed at the same time as property. That property might be made the basis of political power, was indeed a vicious and dangerous principle, yet it had long been acknowledged and acted upon in England, and its propriety had not been brought into question. The Duke of York then, as Proprietary Lord, executed a conveyance to Berkely and Carteret, and in this act, there was no reservation; on the contrary, it was expressly said that the possession was conveyed in as full and ample a manner as the Duke himself had received it. It cannot be disputed that one of the incidents of this possession was the exercise of power, and the grantees of the Duke being put precisely in his situation, they of consequence, became rulers, as well as proprietors. They, indeed, were inferior rulers, they owed and owned allegiance to the King, as the grantor himself had owed and owned it, but no allegiance other than this, was due; they owed none whatever to the Duke of York, because he had parted already with his rights and powers. The decision of Sir William Jones was in confirmation of these views. The claims of the Duke of York were denied, because he had made "no reservation of any profit, or so much as jurisdiction." And beside the theory of the case, there was also important practical evidence. The grantees of the Duke had established a government in the province with the full knowledge of the grantor; and he, so far from making any objection, had actually given instructions that the proprietors should be assisted in their endeavours "for the settlement and the maintenance of quiet in these parts." Nor could any advantage be claimed by the Duke on account of the change that was supposed to have occurred in consequence of the occupation of the Dutch. A second confirmation from the King had been made to Carteret, even before that to the Duke, and this confirmation could not be annulled by the commission which was afterwards given by the Duke to Andross. And besides this, in the proclamation of Andross himself, all former grants, privileges or concessions, and

all estates legally possessed by any under his Royal Highness, *before the late Dutch government were confirmed.* If the Duke comprehended his own position, he cannot fail to be convicted of a want of honesty and honor, if he did not, (which is the more charitable conclusion,) it must then be acknowledged that he was wanting in capacity. It may be, as before observed, that he was lacking in both these respects.

An incidental advantage, and the only one that could possibly arise, was experienced in East Jersey from the claims and demands of the Duke. The government and people of the province had been brought into closer union in the opposition they made to a common danger; all parties had agreed in resisting the usurpations of Andross. But so soon as the outward restraint was removed, the latent evil existing within, began to be actively manifested. The early disaffection to the government had only been quieted, and a new occasion of dissatisfaction and complaint had also been given. The disturbances that occurred in the province had led, as has been seen, to important changes in the proprietary government, and these changes, though acquiesced in for a time, were now objected to. They were represented as an infringement upon the rights that had been granted to the people.

In October, 1681, the Assembly convened at Elizabethtown, and an exciting discussion immediately arose between the Governor and Council, and the Representatives of the people. The latter denied that the proprietors had any right to change the concessions, and that the change was contrary to express stipulations and grants, whilst the Governor and Council insisted, that the alterations had become necessary, and were warranted by the circumstances existing at the time. It is certain that the conduct and course of the people had not been consistent with the terms of the concessions; in fact, the government established by the proprietors had been almost entirely subverted, and under these circumstances the proprietors may have thought themselves absolved from their original obligation. But it may yet be doubted whether entirely new conditions could be made binding upon the people, without their assent, and the only assent that had yet been given was such as might be inferred from continued acquiescence

and an active opposition to foreign aggression.¹² The case was one that presented a question in politics which seemed to be open to discussion, and which was warmly discussed. The Representatives declared that the original concessions were to be accepted according to the letter, and without interpretation, and that the document styled "A Declaration of the true intent and meaning of the Lords Proprietors and explanation of the Concessions," was in truth, a breach of the concessions, and had been a cause of great prejudice to the rights of the settlers, and as the concessions and the "Declaration" were contradictory, they demanded that the latter should be made void. The Governor and Council replied that no false interpretations of the concessions had been made, and demanded that the acts of encroachment complained of, should be specified, and by whom committed. They remarked too, with some asperity, that if the concessions had been understood, as fully as they had been read and examined, the demand that any part should be made void would not have been urged. They also alledged that according to the sixth article of the concessions, the proprietors had a right to make alterations. The Representatives in return directly asserted that the inhabitants were not obliged to conform to the "Declaration," and that as the Governor and Council instead of making an answer, had only reflected upon the understanding of the deputies, they were compelled to make their publication against the said "Declaration." They also denied that any right of alteration was reserved by the proprietors. The altercation was continued until it seemed vain to look for a final agreement, and at length James Bollen, (the Secretary of the province,) Captain Henry Greenland and Samuel Edsall, presented themselves and summoned the Representatives immediately to attend the Governor and Council. The Speaker requested time to consider the demand, but without attention to this request, a declaration was made by Bollen, under orders from the Governor, that "this pretended House of Deputies be dissolved." He also left a paper reflecting most severely upon the conduct of the mem-

¹²The Representatives in the General Assembly had, after the clause taken the oaths of allegiance to the King and fidelity to the Lord Proprietors, so act that might possibly be construed as an acceptance of the resolved government.

bers, and objecting to the name or stile which they had assumed.

This was the first time that the Assembly had been dissolved in New Jersey, and the Deputies with unanimous consent, protested against the act as being contrary to the concessions and an innovation of the government.³ According to the concessions as they had stood at first, the General Assembly had the power of determining its own meetings and adjournments, but this was one of the particulars in which a change had been made by the subsequent "Declaration and Explanation."

This was the conclusion of legislative proceedings under the administration of Governor Carteret; the province itself was soon afterwards conveyed into different hands.

The death of Sir George Carteret, the proprietor of East New Jersey, and the appointment of Trustees to make sale of his lands for the benefit of his heirs, have already been mentioned. In pursuance of this trust, the persons appointed had offered the province for sale, but no private purchaser presenting, it was resolved to expose the entire proprietary interest to a public sale. A strange spectacle was thus presented. The ownership of a country, and the government of a population of five thousand persons, were offered at an auction, with scarcely more form than might have been observed in the sale of merchandize, or the disposal of cattle. But a train of fortunate occurrences warded off from the province the disgrace and injury that might have been apprehended, and that might have occurred, from such a procedure. Purchasers appeared whose character and aims gave sufficient security against an unworthy or improper use of property or power.

The Quakers of West New Jersey had been prosperous in their attempt. They had acquired a territory of ample extent and had established a liberal government; they had also vindicated their rights even against the pretensions of the heir to the throne, and had placed their civil and religious liberties upon a foundation that promised to stand. The success of their experiment gave encouragement to others of the same profession to venture upon a similar trial, and they resolved with this view, to

³ Whitehead, p. 81 and 193.

embrace the opportunity that was now presented. William Penn with eleven associates, some of whom were already concerned in New Jersey, became the purchasers of Carteret's province.¹⁴ Deeds of lease and release, (which are yet in existence,) were made to the purchasers on the 1st and 2d of February, 1681-2. Not long afterwards each of these purchasers sold one half of his respective right to a new associate, and thus the number of proprietors was doubled.¹⁵ Among the new associates admitted in the manner just noticed, were persons not of the same religious profession as the original purchasers, a circumstance that would seem scarcely to harmonize with the primary movement. But it may have been done with design, in order to relieve the proprietors from the charge or suspicion of an exclusive or sectarian purpose.¹⁶ The province was already settled, and the population consisted of persons of different sects; difficulties between the people and the government already existed, and new causes of dissatisfaction were to be carefully avoided. To extend and strengthen the interests of the province by bringing into the connexion persons of wealth and distinction in different parts of the kingdom, may also have been a part of the object in view.¹⁷

Beside the deeds that were given to the original purchasers by the devisees of Carteret, another conveyance was made on the 14th of March, 1682, to the new body of twenty-four, by his Royal Highness the Duke of York. This was done, as was said, "for the better extinguishing of all such claims and demands as his said Royal Highness or his heirs may in any wise have, of, or in, the premises aforesaid, or any part of them," and to the

¹⁴ They gave the sum of 3,400 pounds.

The original proprietors were William Penn, Robert West, Thomas Rudyard, Samuel Groom, Thomas Hart, Richard Mew, Ambrose Riggs, John Haywood, Hugh Hartshorne, Clement Plumstead, Thomas Cooper and Thomas Wilcox who soon parted with his entire interest. The new associates were James, Earl of Perth, John Drummond, Robert Barclay, David Barclay, Robert Gordon, Arent Sommers, Gawen Lawrie, Edward Byllinge, James Braine, William Gibson, Thomas Barker, Robert Turner, and Thomas Warne.

¹⁵ It had been objected that a province governed by Quakers must be left unprovided of the means of military defence.

¹⁶ Some of the new proprietors were of Scotland and others of Ireland.

aforesaid persons the Duke also granted "all and every such and the same powers, authorities, jurisdictions, government, and all other matters and things whatsoever, that ever were, or were intended to be granted unto his Royal Highness, his heirs and assigns."¹⁸ In addition to this, on the 3d of November, 1683, the King issued a letter in which the grant of the Duke of York to the Proprietors, was fully confirmed, and his Majesty also declared his Royal will and pleasure that all persons concerned in the province should yield all due obedience to the laws and government of the grantees, and their heirs and assigns, as absolute proprietors and governors thereof.¹⁹

The new body of Proprietors did not immediately devise or digest a system of laws, but they adopted measures for the maintenance of government within the province. They proceeded at once to appoint a Governor, and their choice for this office fell upon Robert Barclay, of Urie, in Scotland. He was one of the number of proprietors, and at this time had become much distinguished both in his own religious society, and also in the world of letters. An early convert to Quakerism, he had shown a sincere and earnest attachment to the principles and faith of his sect, as well as the highest ability in explaining and defending them. His good condition in the world, his acknowledged capacity, and more than these, the purity of his life, and his good name as a "Friend," all pointed him out as the person best fitted for the principal situa-

"It is not easy to conceive what "claims and demands" his Royal Highness could have had upon the province, at this time. He had already made two conveyances including both property and jurisdiction. It has been presumed that the grant resulted from an application to the Duke by one of the proprietors. This person represented (in a letter to Sir John Werden, the Duke's Secretary) that the proprietors of East New Jersey desired "to have our grant rather holden by charter of his Royal Highness, than as it is at present by transmission from our authors, without any augmentation of our privileges, but to be under the Duke's immediate protection." The answer to this application was not decisive. The Secretary wished to know whether the proprietors desired to *add East Jersey to New York*, or whether they wished to remain distinct, only with the Duke's confirmation of their rights and possessions, as formerly held by Sir George Carteret.

See Whitehead, p. 195.

¹⁹ Grants and Concessions, p. 151.

tion in the government. An additional reason for the present appointment has also been suggested. The sect of Quakers were still opposed, and at times oppressed, but it is yet represented that they were regarded with a degree of favor by the principal persons at the English court, and that the elevation of Barclay, a conspicuous member of this society, was supposed to agree with the wishes of the King, and of his brother, the Duke of York. The agreement between the Quakers and the court has been explained in a manner not much to the advantage or credit of the former.

It has been said "that the falsehood and cruelty that stained the conduct of Charles and James, rendered them hateful to all men except the Catholics and Quakers."⁶ The assertion that the vices of the King, or the court, were looked upon with any complacency by the followers of Fox, if not a calumny, can only be considered as a gross mistake. The sympathy, so far as any existed in the case, was founded upon different grounds. At this period both Charles and James were in real opposition to the people of England, in regard to religion. Charles himself had no religion whatever, either in profession or in fact, but his preferences were rather in favor of the Catholics. James was a rigid Catholic, and was often imprudent both in the avowal and in the support of his faith. But the English people had the strongest dislike to the Catholic religion, and in consequence, the movements of the court were looked upon with constant anxiety and suspicion, and a party opposed to the Duke as the heir to the throne, was constantly gaining in strength.

Penn and Barclay and the rest of their sect, kept themselves apart from every thing tending to disturbance in the State; nothing of this sort accorded with their feelings, or was supposed to fall within the sphere of their duties. Beside this negative virtue, which could not but be noticed, the Quakers were also the advocates of free toleration in religion, and in this particular they fell in with the views which, at the time, either from interest, or con-

⁶ Grahame.—This author, however, attempted to soften his assertion by attributing the compliance of the Quakers less to want of integrity, than a lack in penetration.

viction, were maintained by the Duke. These were the points of union between the leaders of the Society of Friends, and the court, and these were the only points.

The appointment of Robert Barclay as Governor, was made with a condition, that he should not be required to reside in the province, but might exercise his office by deputy. At an early period a deputy was appointed in the person of Thomas Rudyard; he was an Attorney of some distinction in London, and had been brought into communication with "Friends" by assisting at the trial of Penn and Mead. He soon departed for the province in company with Samuel Groome, who was to serve as Receiver and Surveyor General. Both Rudyard and Groome were of the number of proprietors.²¹ They bore a letter from Governor Barclay, directed to "The Planters and Inhabitants of the province of East Jersey in America." In this communication, the Governor on behalf of himself and the other proprietors, set forth, that it was their principal desire to approve themselves in the situation in which Providence had placed them, so that the welfare of the people might be promoted by the new relation, and that they held themselves obliged by the laws of God and the just laws of man, as well as their own interest, to use all proper means to render the plantation prosperous; and it was added that they had sent over two or three of their number, "honest and prudent men," with suitable instructions, who would confirm the rights of such as were there planted upon the concessions heretofore granted, and supply any defects therein.

Soon after his arrival in the province Rudyard appointed six persons as his Council, before whom he was sworn in office as Deputy Governor of the province.²²

The "suitable instructions" given by the proprietors have not been preserved, but their import may be gathered from the subsequent proceedings. The former concessions were to continue in

²¹ They had been appointed to their respective offices on the same day, September 16th, 1682, and arrived in the province November 13th, of the same year. *Whitehead*, p. 95.

²² The Council were Lewis Morris, John Berry, John Palmer, William Sandford, Lawrence Andross and Benjamin Price.

force, including the provisions in relation to government, and also for the disposition of lands and the collection of rents.²³

On the 1st of March, 1682, an Assembly of the province was called, which convened at Elizabethtown, and two subsequent sessions were held in the course of the year. During these sessions important enactments were made. County divisions, which hitherto had been but imperfectly marked, were now distinctly set forth, and established. Four counties were erected, Bergen, Essex, Middlesex, and Monmouth. In each of the counties a High Sheriff was to be commissioned.²⁴ Laws were also passed re-organizing and establishing the judicial department of the government. Certain courts which had been erected without the authority of the General Assembly, were abolished.²⁵ One general court for the whole province was to be instituted, to be called "a Court of Common Right," to which jurisdiction was given in all

²³ In a letter written some time after his arrival, Groome observes, "I purpose shortly to write to, and demand of all places the quit rents and arrears; they generally say they will pay. Captain Berrie is two or three hundred pounds behind in arrears, as is said, because his case differs from others a little. I'll (God permitting) begin with him first of all about his rent, and either have money or land.

Smith's New Jersey, p. 174.

²⁴ The Sheriff was the particular officer of a county, in fact, the word is derived from the existence and authority of such an officer as county, *conditatus*, is derived from *comes*, the Count of the Franks; that is, the Earl or Aderman (as the Saxons called him,) of the Shire, this office was usually exercised by deputy, still called in Latin *vice-comes*.

Blackstone.

²⁵ After the dissolution of the Assembly by Governor Carteret, in 1684, special commissions had been given by the Governor for holding courts, and it was now alleged that such commissions were contrary to the concessions. Under the "Explanations" of the proprietors, the Governor and Council had power to constitute courts in particular corporations already settled, but the Courts of Sessions and Assises were to be constituted and established by the Governor and Council *and* the Assembly. Beside the irregularity in the mode of establishing the courts, objection was made to the persons holding the commissions; Robert Vicers and Captain Henry Greenland were named, who it was said had committed divers misdemeanors and arbitrary actions, as by their being instrumental in dissolving the Assembly in 1681, to the prejudice of the public business of the province, and they were declared incapable of holding any office or trust in the province.

Grants and Concessions, p. 228.

cases, capital and criminal, or civil causes of equity, and causes tryable at common law. To this court appeals might be taken from any inferior tribunals, in all actions or suits for five pounds or upwards. It was to be the supreme court of the province, and to consist of twelve members, or six at the least; four terms to be held in the year, at Elizabethtown, in the county of Essex.

County courts were also erected; they were to be held in each county within the province, in which all causes and cases might be brought to be tried by the verdict of twelve men of the county. The Justices of the Peace of the respective counties were to be the Judges of the county courts, and three at least must be present. But it was provided that the distinction of counties, and the settlement of county courts should not entrench upon the powers or privileges of any grant or charter then existing.²⁶ Beside the courts above mentioned, courts of small causes were also erected, to be held in each town, in every month throughout the year, to consist of three persons without a jury, or a jury might be called, should either of the parties require it.

Acts were passed determining anew the criminal and penal codes. The levitical laws were followed in many particulars, but capital punishment was allowed in a much smaller number of cases than under the former laws of the province. It was provided that in all capital or criminal cases there should be a grand inquest who should first present the offence, and then twelve men of the neighborhood should try the offender. All persons arrested should be bailable by sufficient sureties, unless for capital offences where the proof was evident, or the presumption great. The estates of murderers, after all debts were paid, to go, one-third part to the next of kin to the sufferer, and the remainder to the next of kin to the criminal. Penalties were prescribed against those who should be guilty of resisting authority, of profane swearing, drunkenness, incest, adultery, fornication, and Sabbath breaking.

Enactments were made for the compensation of the Governor, and for defraying the public charges of the province. The amount

* Bergen, Middletown, Shrewsbury, Woodbridge and Piscataway, each had charters giving them special privileges.

required, was apportioned to be raised within the counties by taxation upon improved lands and stocks.²⁷

At an early period a difficulty arose between Rudyard and Groome. The former pursued a course in relation to the disposition of lands which infringed upon the powers, or was contrary to the views of the latter. Groome refused to make surveys of land which he supposed to be ordered with an especial view to the advantage of particular persons, and which he believed would be contrary to the interests of the proprietors. Rudyard insisted, and at length, as the principal officer in the province, he suspended the Surveyor General from office and proposed to appoint another in his place. The difference was finally brought to the notice of the proprietary body, and after full investigation a decision was made in opposition to the acts and claims of the Deputy Governor. Groome was confirmed in office, and it was declared that such grants of land as had been yielded by the Governor, and not surveyed by Groome, should not be regarded as valid. The proprietors also resolved that another Deputy Governor should be chosen, though they acknowledged the services of Rudyard in many particulars and especially in "resisting and curbing the tumultuous spirit there," and they were willing that he should remain in office as Secretary and Register of the province, and in this capacity he was retained and continued to serve.²⁸

On the 17th of July, 1683, a new commission was given to Barclay as Governor of East Jersey. The proprietors declared that the power of government in the province had devolved upon them with authority to appoint such Governor and Commissioners

²⁷ The sum of fifty pounds was to be raised, of which the county of Bergen was to pay eleven pounds, Essex fourteen, Middlesex ten, and Monmouth fifteen pounds. These sums might be paid in money, or in wheat, or corn, or other produce, at specified rates.

²⁸ It is probable that Rudyard was supposed not to have been wholly disinterested in the transaction of the business of his office. The proprietors say, "we are very sensible of Samuel Groome's honesty and fidelity to our interest, in his care in seeking out and discovering the best land, and surveying it for our use, and in refusing to comply with the particular interest of any there, by *accommodating them with lands, or others at their desire*, to our general prejudice."

Grants and Concessions, p. 182.

for the well governing of the province as they should think meet, and that from confidence in the skill and integrity of Robert Barclay, they constituted and appointed him Governor *all the days of his life*.²⁹ Authority was given to him to do every thing appertaining to the charge or office of Governor, according to his commission, and according to the laws and constitutions already existing, or that may hereafter be made; and the office and trust were given to him without laying upon him any necessity to repair to the province, but with liberty to appoint a deputy during his absence, to be approved by *sixteen* of the proprietors.

Not long afterward, Barclay appointed a Deputy Governor in the place of Rudyard. The office was now given to Gawen Lawrie, a Friend, and also a proprietor. His commission was dated in July, 1683. Lawrie had long been concerned in *West New Jersey*, and was entirely conversant with provincial affairs. In his commission he is mentioned by Barclay as "his trusty and well beloved fellow proprietor;" he was to hold the place of Deputy Governor for so long a time as he should conduct himself well, *not exceeding seven years*, and he also had power "in case of urgent necessity," to appoint a deputy under him.

The instructions given to Lawrie by his principal, Barclay, show the pacific influences that had come to prevail since the establishment of the rule of the new proprietors. He was directed (when it should please God to bring him into the province,) to take due care to observe the act of navigation, and to see that it be infringed in nothing, as to what relates to the King's customs, or otherwise.³⁰ He was to maintain a good and friendly correspondence with the Governor and colony of New York, as well as

²⁹ It is supposed that his former commission had not been for life.—*Grants and Concessions*, p. 166.

³⁰ The acts of navigation had excited much dissatisfaction, and in some of the colonies, open opposition. In 1679, Massachusetts declared that they were an invasion of the rights and privileges of the subjects, yet as his Majesty had given orders that they should be observed, a *law of the province* was made requiring that they should be strictly enforced. The instructions of the Governor of East Jersey are probably to be understood in a similar way, not as an approval of the act, but for the purpose of avoiding contention to provide for the observance of these laws *under the authority of the province*.

with the other neighboring colonies. He was to conduct himself with tenderness toward the people of his province; to attend to the matter of quit rents, and to examine into the claims of those who insisted upon patents and grants obtained from Governor Nicholls. He was to take care that the people should rightly understand the advantages of the scheme of government which had been prepared, and which was then sent over to be established. He was instructed, in relation to the laws passed at the last session of the General Assembly, and which had been sent over for approval, that though the proprietors did not object to some of them, yet they did not think proper to confirm them, as a new frame of government, "far more advantageous" to the province, was now to be introduced, and things should be ordered accordingly.³¹

Lawrie did not arrive in the province until the year after his appointment. He was received by the Council appointed by his predecessor, and his commission was read in their presence, and the oath of office administered on the 28th of February. The same persons were continued, for the time, in the Council.³²

The Deputy was intrusted with the new code of laws, called "The Fundamental Concessions," which had been devised by the proprietors, for the government of the province. This plan differed in many particulars from the concessions of the former proprietors. The first of its articles which prescribed the mode of appointing a Governor and the term of his office, sufficiently manifested that the appointment of Barclay for life, and without residence, had only been made in consideration of high and unusual merit. It provided, that after his death, (or in case of such malversation as should cause him to be divested of office,) the proprietors should choose a successor, who should be required to reside in the province, and who should continue in office only for

³¹ The laws above mentioned were afterwards confirmed, excepting only a few particulars. *Grants and Concessions*, p. 279 and 281.

³² Afterwards, in November, 1684, a change was made in the Council, Lewis Morris, Richard Hartshorne, Major Berry, Major Sandford, Isaac Kinglands, Thomas Codrington, Benjamin Price, Henry Lyons and Samuel Dennis were appointed. *Whitehead*, p. 100.

three years, and that if any one should, within that period, propose his continuance for a longer time, or to choose him anew, or his son, it should be esteemed as a betrayal of the public liberty of the province, and the actor be esteemed a public enemy.

The legislative authority of the province was placed in a "Great Council," to consist of the four and twenty proprietors, or their proxies, and one hundred and forty-four persons to be chosen by the freemen of the province; but at first, until other divisions should be made in the province, seventy-two only of these Representatives were to be chosen, making with the Proprietors or their Representatives, ninety-six members. All persons were to be capable of choosing, or being chosen in the Great Council, who were planters and inhabitants within the province, and were possessed of a certain specified freehold estate. The Council were to form one body, and it should be the privilege of each member to propose any bill, and all matters should be determined by vote of two-thirds, yet twelve proprietors, or their proxies, must be assenting, to pass any act. A quorum of the body might be formed to consist of one-half the proprietors or their proxies, and half of the deputies at least, and in the determinations of matters before them the proportionate weight of the two branches should be the same as before, one-half of the proprietors present, and two parts of the deputies.³³

All laws were to be published and to run in the name of the Governor, Proprietors, and Representatives of the freemen of the province. For avoiding a multitude of statutes it was determined that no law should remain in force more than fifty years after it was enacted, unless confirmed *de novo*, excepting the fundamental articles or concessions which were not to be repealed, but to remain forever in force.

³³ In this body, although the two branches were to meet in one house, a distinction of character was yet to be maintained between them, in voting. It is possible that a similar mode of acting may have been contemplated, though not expressly directed, in the concessions of Berkely and Carteret, but *there*, as has been seen, the branches became distinct at the very commencement of their proceedings, not merely in voting, but also in sitting, so as fully to constitute two houses, and this separation was afterwards confirmed by the proprietors.

The executive authority was to be composed of the Governor, and Common Council, the latter to consist of the twenty-four proprietors, or their proxies, and twelve persons chosen by ballot out of the Great Council.³⁴

The executive body appointed the public officers of the province, as the Secretary, Register, Treasurer, and Surveyor General, as also all Sheriffs, Judges and Justices of the Peace.

It was provided that no person within the province should be taken, imprisoned, or injured in his person or estate, but by lawful judgment of his peers, neither should justice be bought or sold, deferred or delayed. All trials should be by twelve men, as near as may be peers and equals, and men without just exception. In all courts persons of all persuasions might appear in their own way and manner, and plead their own causes, or if unable, by their friends, no person being allowed to take money for pleading, or advice, in such cases. No monies should be levied within, or upon any within the province, but by a law passed by the Great Council, and if any one should levy, collect, or pay monies without a law thus passed, he should be held a public enemy, and a betrayer of the public liberty. No person who should confess and acknowledge the one Almighty and Eternal God, and hold himself obliged in conscience to live peaceably and quietly in civil society, should be molested or prejudged for his religious persuasion and exercise in matters of faith or worship, nor be compelled to frequent or maintain any religious worship place or ministry, yet no man should be admitted a member of the Great or Common Council, or any other place of public trust, who should not profess faith in Jesus Christ, and solemnly declare that he doth not feel himself bound in conscience to do any thing to subvert the government of the province, or to injure any person because they may differ from him in judgement, or because, in his opinion they are heretics.³⁵

³⁴ The members of the executive body, thirty-six in number, were to be distributed into three committees, twelve for the public policy and to look to *manners*, education and *the arts*, twelve for trade and the management of the public treasury; and twelve for the plantations and all controversies respecting them.

³⁵ But it was said that it was not intended that any under the notion of liberty shall allow themselves to avow atheism, irreligiosity, or to practice cursing,

The provisions for the defence of the province were so made as to meet the difference of opinions and views existing in the proprietary body, it being declared that among the present proprietors, "there were several who have no freedom to defend themselves with arms, and others who judge it their duty to defend themselves, wives and children, with arms." It was therefore agreed that they should not force each other against their respective judgements and consciences, and that no man who should declare that he could not in conscience bear arms, should be required to do so, or to provide another in his stead, and on the other hand, those who should judge it their duty to take up arms in the public defence, should have their liberty to do this, in a legal manner. The same tenderness was to be observed in legislation in providing for the defence of the province by the establishment of forts, castles, or other military works. So also, none of the inhabitants should be forced to contribute money for the purchase and use of arms contrary to their consciences; whatever might be raised for these purposes should be paid by such as felt themselves free in the case, provided that those who opposed the bearing of arms should pay so much in other charges, as to make up their proportion of the general expense of the province.

But to these concessions certain conditions were appended. The proprietors set forth, that they had been met "for good and weighty considerations, and as a further signification and explanation of our intentions therein," to declare, that this scheme of government and the privileges it granted were only to be allowed to those who should become planters and inhabitants in the province, after the arrival of Governor Lawrie, and not to those before settled; nevertheless, they might be granted to the former inhabitants and planters, upon compliance with certain conditions. The grants and patents by which these persons claimed to hold land, should first be viewed and examined by the Deputy Governor and the major part of the proprietors who should be present at the place appointed for such examination, and all legal titles should

swearing, drunkenness, profaneness, whoring, adultery, murdering, or any kind of violences, or indulging themselves in stage plays, masks, revels, or such like abuses."

be entered, and registered for confirmation, by the new proprietors. Full satisfaction should also be given for the arrearages of quit rent and for punctual payment in future, and the settlers should agree to a grant for the constant support of the government. If any should prove refractory in these particulars, they were to be treated accordingly; those who might justly claim to the former concessions, were to be ruled by them, and others were to be governed according to the full extent of the authority vested in the proprietors.³⁶

But the projected government was not brought into action. The proprietors had directed the deputy to take care to let the people rightly understand the advantages it gave, and "as soon as possibly he can, *order* it to be passed in an Assembly, and settle the country accordingly." It is possible that the question might again have been started which had formerly arisen, as to the obligation of the settlers to submit to the several changes of government which the proprietary body might think proper to direct. But beside this, the "advantages" of the plan that was now presented, were not so clearly perceived, or so highly valued by the people, as they seem to have been by the framers themselves. The concession respecting contributions or services for military purposes, however important in the view of a portion of the proprietors, were not highly considered by the colonists. The Quakers formed but a small proportion of the population of the province, and by others, these regulations would be but little esteemed, if not actually disliked. Nor was there much in the form of the government itself, to recommend it to especial favor. ⁷

³⁶ Grants and Concessions, p. 179.

⁷ Beside the provisions relating to military affairs, (and these, though just, would only be acceptable to a part of the settlers,) the principal advantage of the new scheme as compared with the former one, was the power it gave to the legislative body over its own meetings. It is said by Whitehead, that the acceptance of the new government would have involved the destruction of a system already established and tried, and which in "all its general characteristics" was in accordance with their wishes. But the people had not manifested full content with their government; the former concessions, with the "explanation," had been strongly objected to, as has been seen, yet still, it was probably supposed to be at least as advantageous as the one now offered.

In consequence, the former supporters of government would be but little disposed to a change, and the opponents of government would not be conciliated. By providing for the continuance of two different systems or forms of government, either of which might be administered according to circumstances, the proprietors probably designed, that a way might be opened for a removal of the difficulties which had heretofore existed, particularly in reference to the titles to land. It may have been supposed that by such a procedure the whole of the settlers would be gradually brought into full acquiescence. But the opponents of the proprietary regulations had never been compliant, and the advantages now presented were not such as would be likely to cause an alteration in their course. In fact, however, any constitution of government whatever, containing requisitions for the payment of rents, and a new determination of the titles of land, would then have been resisted by a portion of the settlers. The old leaven of opposition which had heretofore been productive of so much disturbance, was yet in existence, and in active operation. A theory or claim which was strongly commended by interest, was adhered to with the greatest tenacity, and to all the demands of the existing authorities, an easy reply was given by exhibiting a title from the "Indian right."

The opposition arising from this source was especially noticed by the proprietors. Soon after the departure of Lawrie for the province, a letter was written addressed "to the planters and inhabitants," in the name of Barclay, the Governor, and the other proprietors.³⁸ Its language was strong and explicit, "We are not a little troubled, it was said, to find that there are many dissatisfied and self-ended persons among you, who are seeking to subvert our just interest, that they may advance their own unwarrantable pretences. And it cannot but manifestly appear to all such that love the interest of the colony, that those that went about to propogate any pretence, to oppose or weaken our right and title, could not be esteemed friends, either to the proprietors, or to the true interest of their honest and well meaning neighbors in the country, since that was the way to expose the whole to be

³⁸ Dated February 29th, 1683-4.

a prey to others, as it formerly has been; but we hope by the assistance of God and the King's justice and favor toward us, so to prevent such practices in future, that all persons residing in the province, or in any way concerned therein, may rest in full assurance of being protected in their rights, and receive all due encouragement from the proprietors. We find, it was further said, that you lay that stress upon your purchase from the Indians, that it will never bear, for we would have you informed that thereby you have acquired no right but what is duly confirmed by us, or our legal predecessors, unless you would renounce all interest and protection from the King of England, and subject your all to a just forfeiture."

Whether the Deputy Governor supposed that the form of government devised by the proprietors, was not well suited to the province, and that the attempt to apply it would only be productive of increased dissatisfaction, or whether he supposed that the opposition was yet too strong, and therefore awaited a more fitting opportunity, it would at any rate appear, that no attempts were made at the time, to cause the concessions to be adopted in the province. But the Deputy exerted himself for the furtherance of measures that were calculated to lessen or control the opposition that existed to the proprietary interests and claims. The new settlers in the province were mostly well affected toward the existing authorities, and the Governor urged upon the proprietors that every encouragement should be given to immigration. By this means he supposed that such a change would be wrought as "*would bring all the division that hath been here, to an end, for these men seeing that they are to be balanced, are already more compliant than they were.*"

The proprietors were already disposed to favor the entrance and settlement of planters, and many efforts had been made to invite their attention to the province.²⁹ But beside the advantages

²⁹ Particular efforts were made to induce emigration from Scotland. For this purpose Governor Barclay and the other proprietors in Scotland exerted their influence, and the situation of affairs at the time disposed a number of persons to accede to the proposals that were made. Governor Lawrie expressed his satisfaction at their arrival in the province. At a subsequent period a publica-

which were expected from the introduction of a new population, other expedients were resorted to. To obviate further difficulty from the purchase of lands from the Indians, a regulation was particularly renewed, forbidding all purchases, except by permission from the authorities of the province, and the Deputy Governor was authorized to make requisitions upon the proprietors for the necessary funds. It was also thought proper that full and ample power should be given to "some persons upon the place," who might with greater freedom and clearness treat of, and conclude concerning the several matters that might there arise. Special instructions were therefore given on the 1st of August, 1684, conveying power and authority to the Deputy Governor and several other persons who were named, and who were proprietors or proxies in the province, for the management of affairs in regard to several particulars. They were to "end and agree" all matters in debate between the proprietors and the former planters of the province and others, as to their pretences to land and the arrears of quit-rent; to approve and confirm such acts of the Assembly as it should be thought necessary to establish, before confirmation could be made by the proprietors; provided however, that when the "Fundamental Constitutions" should be passed in Assembly, they were then to proceed according to them;

tion was made at the instance of the proprietors, giving a fuller account of the province, and setting forth its advantages. This was written in 1685, by George Scot, of Pitlochrie. He represented to his countrymen the advantages to be gained by a removal to America. "You see," he said, "that it is now judged the interest of the government altogether to suppress the Presbyterian principles, and that in order thereto, the whole force and bensill of the law of this kingdom are levelled at the effectual bearing them down, that the rigorous putting these laws in execution, hath in great part ruined many of those, who, notwithstanding thereof, find themselves obliged in conscience to retain those principles. I would gladly know what other rational medium can be proposed in their circumstances than either to comply with the government by going what length is required by law in conforming, or to retreat where by law a toleration is by his Majesty allowed, and such a retreat doth at present offer itself in America." He further set forth that "having for some time made it my work to consider all the coast of America, East Jersey, upon the River Hudson, is the place I find myself obliged to prefer to any other of the English Plantations."

Scot's Model of Government given by Whitehead.

they were also to direct the improvement of the town of Perth, and have the superintendence in other particulars. In consequence of information received by the proprietors, fuller instructions were soon afterwards given to the commissioners just mentioned.⁴⁰ The Deputy Governor, with five of the persons before named, might exercise the powers that had been granted. They might terminate all controversies and differences with the men of Neversinks and Elizabethtown, or any other persons, concerning any "pretended titles or claims to land in the province," and it was expressly said that the proprietors "on this side" would not enter into any treaty with persons claiming by Colonel Nicholl's patent, or by patent received from the late Governor Carteret, as such a course would be an affront to the government of the province, and only tend to delay. The commissioners thus appointed became known as "the Board of Proprietors," and finally took the management of all affairs connected with the proprietary titles and claims. In regard to the authority of this board for the confirmation of the laws of the province, some special reservations were subsequently made by the proprietors in reference to the acts that had formerly been passed; with other particulars, it was required, that the Court of Common Right, instead of being held at Elizabethtown, as provided by the Assembly, should, if it be possible, always be held at the town of Perth, and that all other necessary courts, as also the Assembly (when called,) should sit there, and that the Deputy Governor should reside at that place and convocate his Council there.⁴¹ But in regard to his residence, Governor Lawrie was not observant of the instructions that were given: he continued to reside at Elizabethtown, as before, a circumstance that may have operated to create dissatisfaction.⁴²

⁴⁰ By letter dated the 13th of November, 1684.—*Grants and Concessions*, p. 202.

⁴¹ The efforts of the government were particularly directed to the establishment of a town at that place.

⁴² Oddenixon and Wynne attribute the discontent that was afterwards manifested with Lawrie's administration, to the cause here mentioned. But there were others, that were probably considered of more importance.

Whitehead, p. 108.

At this period, the external relations of the province again became involved. The course of policy which the proprietors had prescribed was calculated to place the province in relations of amity and peace. That it was not productive of such a result, is not to be attributed to error in the mode of proceeding, or in the conduct of the person who directed it. Governor Lawrie was earnest and sincere in his endeavours. He sought to fulfil his instructions to keep a good and friendly correspondence with the Governor and colony of New York, and was desirous to remove every thing that might prove an occasion of difficulty. At an early period he had visited the Governor of that colony, and the intercourse between them was marked by an appearance of friendliness. The proprietors and Governor of New Jersey discouraged immigration to their province from New York, from an apprehension, that though very desirable on other accounts, it might tend to give rise to suspicion and jealousy. But the authorities of New York were by no means so scrupulous. Dongan, who was then the Governor of that province, was a true successor of Andross, as well in character as in place, except that he had duplicity and smoothness instead of boldness and arrogance. He was busy in endeavouring to influence the Duke of York to attach New Jersey to his own province. The proprietors of New Jersey at length became satisfied that the conciliating course they had taken, had not been met by a like return. Hence, three of their number,⁴⁵ (who it is probable had been appointed for the purpose) directed a letter to Governor Dongan in which they say, that they had expected to find in him a generous neighbour, both from the kindness which they supposed he entertained for them, and also from a regard to the honor of the Duke, his master, from whom their province had been received. They mentioned that they had seen the Duke's Commissioners in London, concerning the proposal which Dongan had made, to place their colony under the government of New York, and they doubted not that the Commissioners were satisfied of the injustice of such a proceeding. They stated also that they had waited upon the Duke himself,

⁴⁵ Perth, McKensie, and Drummond.

who had declared that he was far from intending to do any thing in opposition to what he had formerly granted.

Governor Dongan replied to the proprietors, and endeavored to exculpate himself from the charge of having done any thing contrary to the good of the province, or the honor of his master. He was, he said, "mightily surprised" to find that he was accused of doing any thing to the disadvantage of the province; on the contrary, he had advised the settlers to what he considered the best, both for the proprietors and themselves. He had written to his Royal Highness and his Commissioners, as he was obliged to do, and had given his opinion as to what was for the interest of his province and *had represented to them the great inconveniences of having two distinct governments in the same River*, and especially as East Jersey had the advantage of being some leagues nearer the sea than New York.¹⁴ But to show that he had done nothing amiss in representing "how convenient it would be to regain East Jersey;" he asserted that some of the proprietors themselves were of the same opinion, and had told him so. And as in evidence of his own justice and leniency, he also mentioned that though under former Governors, vessels going to Amboy had entered at New York, that he had done nothing to prevent them from passing freely, and should not, without express orders from his Royal Highness.¹⁵

In a subsequent communication to the Secretary of the Duke, Governor Dongan suggests that "it would be well to look into the 1st patent of East Jersey, to see whether shipping be obliged, if they come into Sandy Hook, to make entry at New York." Under this specious mode of expression a desire is apparent, that some authority might be found or created, to arrest the trade to East Jersey, and divert it to New York. The desires of Dongan were soon to be gratified in part, though not in the manner he might have preferred.

It has been seen that the proprietors of East Jersey had given

¹⁴ Chalmers, p. 661. Whitehead, p. 211.

¹⁵ It was a singular proof of favorable intentions that he had refrained from outrage upon the rights of a neighboring colony. But as his predecessor had refrained, the merit of comparative justice, at least, may be allowed.

directions to Governor Lawrie for the observance of the acts of navigation, and that nothing should be done in opposition thereto. In obedience to this direction, an officer was admitted into the province as Collector of the Customs. This officer was William Dyre, the same person who had formerly been appointed to a similar service under the authority of the Duke of York.¹⁶ No obstruction was offered to his entering upon the business of his office. But his authority was exercised in a manner that inflicted an additional injury upon the province, beside that which resulted from the nature of the laws under which he was acting. Orders were given that vessels belonging to East Jersey should be entered at New York, and that the duties on their cargoes should be paid to the Collector at that place. These regulations were extremely inconvenient and injurious, and excited much dissatisfaction. Dyre, who was more desirous to ensure his authority, than to exercise it aright, transmitted complaints to the Commissioners of Customs, that resistance was made to his authority; he stated that when he attempted to prosecute vessels for avoiding the laws, the juries gave verdicts against him, contrary to obvious facts; and that he was thus prevented from enforcing the payment of dues. His statements and complaints, without any explanation of circumstances, were laid before the Ministers. A pretext was thus afforded for a more active prosecution of schemes, which had already been considered, and perhaps resolved upon.

The representations of Dongan and others, had not passed unheeded, and an union, with a general subjection of the colonies, was in contemplation. Positive assurances had been given by the Duke of York to the proprietors of East Jersey, that he would do nothing that should be contrary to his previous engagements; but his Royal Highness was now in a situation in which he seems to have conceived that he was free from all obligations on account of his former agreements. On the death of King Charles, which occurred in February, 1685, James, the Duke of York had

* He had been appointed by the Commissioners of Customs, to be Collector both for Pennsylvania and New Jersey, receiving his commission on the 4th of January, 1682. He entered upon office in East Jersey in April, 1685.

been raised to the throne, and in his high elevation as King, the grants and engagements he had made in a lower situation, were but little regarded. Three different times had he granted to the proprietors of East Jersey all the rights of ownership and government which he himself had possessed, and the grants had been made in as full and forcible a manner as the most studied forms of expression would allow, and they had also been confirmed in a formal manner, by the King, his predecessor. But it was found or asserted that there was not a perfect acquiescence on the part of some of the colonists in a demand for customs; a demand which was unjust in itself, and which was also unjust in the mode of its enforcement; yet the want of compliance was made an offence, and if the course that was resolved upon was lacking in justice, there was that which might serve in its stead. The King had power.

In April, 1686, the Attorney General was directed to issue a writ of *Quo Warranto* against the proprietors. The reason for such a procedure was stated to be "the great prejudice in the plantations and the customs here, if such abuses should be any longer suffered, in a country *which ought to be more dependent on his Majesty.*"

During the pendency of these proceedings, the General Assembly of the province was convened, being the first since the coming of Governor Lawrie. Agreeably to the orders of the proprietors, the Assembly met at Amboy Perth, in the county of Middlesex, on the 6th of April, 1686. Several enactments were made, but relating entirely to the internal affairs of the province. The compensation of the members of the Assembly was settled.¹⁷ The place of holding the Courts of Common Right was changed in accordance with the orders of the proprietors, from Elizabeth-town to Perth Amboy. The prevailing spirit in the proprietary body was yielded to in an enactment which provided, that persons summoned as jurors, and who were scrupulous of taking an oath,

¹⁷ By the former Assembly the compensation was settled at four shillings a day, it was now reduced to three shillings, the Assembly "being desirous to ease the charges of the country in paying great salaries." The payment might be made in money, pork or corn, equivalent, a reasonable allowance being made for the time expended in going and coming.

should be received, upon taking an "engagement" according to a form prescribed. Under the same influence a law was passed prohibiting the wearing of arms, or sending a challenge to any person to fight, and the person who should receive such challenge and not discover it to the Governor, or some public officer, should forfeit the sum of ten pounds. At an adjourned session held in October of the same year, acts were passed regulating the times and places of holding the county courts; and another determining the fees of public officers, it being said that "the inhabitants had sustained a great burden by reason of unlawful fees."

At this period a change was made in the administration of government. The proprietors had not derived the expected advantages from their connexion with the province; the quit rents had been but reluctantly and tardily paid, and in many instances had remained unpaid, and the government that had been devised and recommended, had not been accepted by the people. It may be that these failures were considered as attributable in some degree, to a want of interest or energy in the Deputy Governor, in the discharge of his duties.⁴⁸ Such a view, however, can hardly be considered as just. Lawrie had probably exercised his office according to his best discretion, and with a sincere desire to promote the prosperity and welfare of the province. But his situation had been one of no little difficulty; dissensions had continued to exist, particularly in relation to the titles of land; and the multiplication of claims seemed only to increase the confusion. Some of the regulations of the proprietors too, though properly designed, were hardly capable of being carried into practice. It must be admitted, however, that in certain cases, Lawrie proceeded rather according to his own judgement, than in compliance with the instructions that had been given him, a course which, whether profitable or not, may not have been the best to give satisfaction. Besides this, he had fallen into the same error as his predecessor Rudyard, in taking up lands in a manner which, if not forbidden

⁴⁸It has been suggested by some writers that the interest of Lawrie in *West Jersey* had rendered him less attentive to the discharges of his duties in the other province. For this, however, there seems little foundation.

by any regulation, was yet supposed to be injurious to the general proprietary interest.⁴⁹ These several reasons led to a new appointment. In the selection of a successor, there is reason to believe that Governor Barclay and some of his associates, were governed rather by the character and views of the colonists, than by their own particular preferences. A considerable number of Scottish emigrants were now in the province; they were mostly a quiet and industrious people, and the increase of such a population was to be in every way encouraged, and the appointment of one of their own countrymen as Deputy Governor might further the object in view. The religious opinions of the colonists were also to be considered. Quakerism had never taken a deep root in the province; a large proportion both of the old and of the new settlers were of other persuasions. The settlers from New England retained their Puritan faith, and most of the Scotch were adherents to their own Kirk. The new Deputy who was appointed on the 4th of June, 1686, was a Scottish Lord, and a staunch Presbyterian. This was Lord Neill Campbell, a brother of the Duke of Argyle. The two brothers had been concerned in transactions in their own country, which, however they may be considered in view of their objects, were still such as to subject the actors to punishment as public offenders.⁵⁰ Lord Campbell

⁴⁹ Rudyard and Lawrie had taken up lands which were supposed to be of special value, and with a particular regard to their own advantage. Hence, in 1685, instructions were given that "wherever there is an extraordinary choice spot of land, so esteemed by the Surveyor General, or any two of the Commissioners, either for the excellency of soil or advantage in situation, it shall be reserved for the joint interest of all the proprietors, and cast in equal division, or if it be such as for the smallness of it, or any other reason, cannot be so ordered, it shall not be meddled with until the plurality of the proprietors are advised thereof, that by them it may be determined whether after a value be put upon it as one acre, esteemed with four or more, it shall go to such as will allow most to the rest for it; or where they will not do so after the value set, it shall be determined by lot, as this should have been done in the notable case of Changoroza, by Gawen Lawrie and Thomas Rudyard, so it is hereby declared by the Governor and proprietors, that they will not let that land there which they have taken to themselves, and caused to be set out to them, go otherwise.

Grants and Concessions, p. 212.

⁵⁰ The Earl of Argyle entered Scotland in 1685, for the avowed purpose of

apprehending the necessity of leaving his country, had purchased a portion of a proprietary right in East Jersey, which had been held by Viscount Tarbet, and sent over a large number of settlers. He was appointed to serve as Deputy Governor for two years, and directly departed for the province.

Whatever may have been the aims of the proprietors in the appointment of Campbell, it seems clear that the principal object with *him* in coming to the country, was to secure a retirement from the difficulties and dangers in which he had been previously involved. Hence he only remained until such an alteration occurred as was supposed to admit of his safe return. The only official act of his upon record is the confirmation of the laws which had been passed by the late Assembly.⁵¹ On the 10th of December he surrendered his office, and not long afterwards departed from the country, stating that "by the urgent necessity of some weighty affairs, he was about to take a voyage to Britain." Whether his commission allowed him the same privilege that had been given to Lawrie, that "in case of urgent necessity" he might appoint a deputy under him, is not determined, but this privilege was used. He placed Andrew Hamilton, a Scotchman who had lately arrived in the country, in office as his substitute. The commission of Hamilton was published in March, 1687, and he entered at once upon the duties of his place.

On the 14th of May of the following year, the General Assembly convened. At this session several laws were enacted, by one of these the county of Middlesex was divided into two counties, one retaining the former name, the other to be called the county of Somerset. An act was also passed "for a tax to withstand invasion." It directed that a tax should be levied of a penny in the pound on all estates, and ten pence per head on all males over

avenging the wrongs of countrymen, but the undertaking terminated in failure and the death of the Duke. Whether there was any sympathy with Argyle and his brother, among the proprietors of East Jersey, is unknown, but one of the principal of them, the Earl of Perth, had been an active opposer of Argyle's proceedings. This circumstance renders it probable that the appointment of Campbell was made merely with a view to the supposed interests of the province.

⁵¹ Grants and Concessions, p. 301.

sixteen years of age. The amount thus raised was to be held subject to the directions of the Governor of New York, who had been authorized by the King, in case of an invasion by the French, to call upon the neighboring provinces for aid and assistance.

During this period, the writ of *Quo Warranto* that had been issued by orders from the King continued to hang over the province. The proprietors exerted themselves to avert the danger. They presented a remonstrance to the King, in which they reminded him, that the province had not been conferred upon them as a favor, but had been acquired by the expenditure of a large sum; that they had received a confirmation of their title and assurances of protection from himself, as well as from his late Majesty King Charles II, and that relying upon these they had sent thither several hundreds of people. But they were desirous to avoid a controversy with his Majesty, and were willing to correct whatever might be found amiss in the conduct of affairs, and hence they proposed that the same taxes which were levied in New York, should be raised in their own province by act of Assembly. They besought that if a change in the administration of the province should be resolved upon, that the King himself would appoint a Governor out of their own body, who might have charge both of East and of West New Jersey as one jurisdiction.²² They also asked that an appeal from the courts of the province should be had to England only; and in order that no further difficulty might arise in the enforcement of the navigation acts, they suggested, that an officer might be appointed to collect the customs at Perth Amboy, so that a port might be fully established in the province for entering and clearing vessels without molestation. In the last mentioned particular only was the application of the proprietors at all successful. In August, 1687, a direction was transmitted to the Governor of New York, instructing him to per-

²² West New Jersey does not seem to have been involved in the *Quo Warranto* process. Yet it was included with the other province in the provision for the collection of customs, and therefore could hardly fail to share the same fate with it; this, together with the interest which many of the proprietors of East Jersey had on the western portion, may be supposed to have led to the proposal above mentioned.

See note in Whitehead, p. 113.

mit vessels to pass to Amboy without interruption, and a Collector for that place was appointed. But in this particular concession, it was not intended to give any favorable assurance in regard to the general course of proceeding; it was rather designed to secure an increase of revenue.

The King was not to be moved from his main design. The time had arrived when the true value of Royal engagements was to be fully exhibited. The charters of most of the New England colonies which had formerly been granted with all the formalities of the most binding agreements, were now to be annulled. The hand of unscrupulous authority was to sweep the land "from St. Croix to Maryland." The country must be "more dependent upon his Majesty." Andross, the former convenient instrument of arbitrary power, was commissioned anew and despatched to New England with authority to assume the entire direction of affairs. Massachusetts had been forced to yield, and the governments of Rhode Island and Connecticut were dissolved, and the work of destruction was still advancing. It was hardly to be expected that the petition of the proprietors of East New Jersey, although they had received their grant from James himself, would now be respected. The final reply to their application declared, that the King had determined to unite the Jerseys with New York and New England under one government, to be administered by Andross.⁵³ Finding that no hope could be entertained of preserving their rights, the proprietors finally resolved to surrender the government, in order to avoid a fruitless and irritating contest. This was done upon the condition that the ownership of the soil should continue undisturbed, and thus the *property* of the province be retained as before. The terms were accepted by the King, and in consequence, the proceedings under the *Quo Warranto* were suspended. West New Jersey acceded to this arrangement. The surrender of the government of both provinces was made in April, 1688.

A new and enlarged commission was issued to Andross, annexing to his government both New Jersey and New York. Francis

⁵³ Grahame, vol. 2, p. 299.

Nicholson was appointed his Lieutenant. Not long after the reception of his commission, Andross arrived in New York and received the government from Dongan, the former Governor, and presently afterwards paid a visit both to East and West New Jersey.⁵⁴

In the present situation of the country there was but little occasion for the exercise of power, and it may be that on his new and more extended theatre of action, Andross was less ambitious of particular display; he at any rate, exhibited at this time a degree of moderation that had not been witnessed in his previous course. He continued most of the officers of the province in their places, and made but little alteration in the conduct of business. This forbearance indeed was in no wise greater than the state of affairs demanded: as yet the agreement between the proprietors and the King had not been brought to completion. The yielding up of the government was connected with a condition, that assurance should be given of the right to the soil, and until this should be done, the proprietors might claim that rightful authority was still in their hands. The stipulated confirmation was not made by the King, and the period quickly arrived in which, if an intention to fulfil his engagements existed, the power was finally and forever lost. In the revolution which occurred soon afterwards, James the Second was driven from his throne, and ever afterwards continued in exile.

⁵⁴ In a letter from New York, dated October 4th, 1688, Andross states that he arrived on the 11th of August, and that his Majesty's letters patent being published, he immediately received that place, and East New Jersey on the 15th, and West New Jersey on the 18th following. See *note in Walpole's* p. 112.

CHAPTER XIII.

WEST NEW JERSEY.—GOVERNMENT AFTER THE RELEASE OF THE DUKE OF YORK.—CONDITIONAL SURRENDER OF GOVERNMENT.

THE release of West New Jersey by the Duke of York, and the manner in which the conveyance was made, have already been noticed. It would seem somewhat extraordinary that notwithstanding the opposition that had been made to the pretensions and claims of the Duke, that the grant which was executed by him was afterwards taken, in part, as the foundation of government. But the conveyance of authority to Byllinge had given to that individual a semblance of right, which there is reason to believe he was unwilling to resign, and which the proprietors were then reluctant to contest. But a course was pursued which was calculated to secure to the people the rights and privileges which they had formerly enjoyed. The first step was the *election* of Byllinge by the proprietors, to be Governor of the province.¹ The particular conditions of his

¹ The election of Byllinge as Governor could only have been made in deference to his claim to authority from the grant from the Duke, unless some new conditions had been made, and none such appear. The former concessions provided for no such office as Governor. There was an apparent design to effect an union of different plans by conceding, to an extent, the pretensions of Byllinge, and yet preserving the rights of the settlers. An election was not a direct denial of the claim to superior authority, yet it implied that a right of choice existed in the party electing. It is singular that no apprehension in regard to the effect of the grant to Byllinge was expressed at the time; Samuel Jennings wrote, that he had received an account of a new grant obtained, wherein the customs were taken off, a free port confirmed, and the government settled on Edward Byllinge, "which I doubt not will be very acceptable to every honest man." (*Smith's New Jersey*, p. 125.) But although the release from customs was a most important advantage obtained by the province, the grant in relation to government was somewhat doubtful, and did not prove in the end to be entirely "acceptable."

election are no where given; but he presently proceeded to the appointment of a deputy. This office was given to Samuel Jennings, a man of some distinction already in the province. At an early period the Deputy Governor summoned an Assembly, which met at Burlington on the 21st of November, 1681, being the first Assembly that convened in West New Jersey.² The body entered at once upon the consideration of the state of affairs and adopted such measures as the altered condition of things appeared to demand; reasserting the rights that had formerly been held, and laying down positive limitations upon the action of the new authorities. A deep sense of the importance of their work appears to have been felt by the members. "Forasmuch," they say, "as it hath pleased God to bring us into this province of West New Jersey, and settle us here in safety, that we may be a people to the praise and honor of his name who hath so dealt with us, and for the good and welfare of our posterity to come: We the Governor and Proprietors, freeholders and inhabitants of West New Jersey, by mutual consent and agreement, for the prevention of innovation and oppression either upon us or our posterity, and for the preservation of the peace and tranquillity of the same, and that all may be encouraged to go on cheerfully in their several places; do make and constitute these our agreements, to be as fundamentals to us and our posterity, to be held inviolable, and that no person or persons whate'er, shall or may make void or disannul the same, upon any pretence whatever."

It was provided that there should be a General Free Assembly, yearly and every year, to be chosen by the free people of the province, to consider of the affairs of the province, and to make and ordain such acts and laws as might be required, and the Governor, with the consent of his Council, might, if necessary, convene the Assembly at intermediate times.³ That the General Free Assembly chosen as aforesaid should not be pro-

² The number of the members in this Assembly is not determined.

³ The Council was a feature of government now first introduced. Under the earlier concessions the executive authority was wholly in the body called Commissioners. This latter body however was still continued, but with restricted duties and powers.

rogued or dissolved before the expiration of one whole year (from the day of their election) without their own consent. That all officers of state or trust should be nominated and elected by the General Assembly for the time being, or by their appointment, and that such officers should be accountable to the General Assembly, or to such as they should appoint. That no Assembly should give to the Governor for the time being, or his heirs or successors, any tax or custom for a longer time than one year. That liberty of conscience in matters of faith and worship towards God should be granted to all people within the province, who should live peaceably and quietly therein, and no one should be rendered incapable of office on account of faith and worship.

In reference to the Governor and Council, it was provided, that the Governor should not suspend or defer the signing and confirming of such laws as were passed by the General Assembly. That it should not be lawful for the Governor, or his heirs and successors, and Council, at any time to make and enact any law or laws for the province without the consent of the Assembly, and that if they or any of them, should attempt to make such laws without the assent of the Assembly, they should, upon legal conviction, be deemed and taken to be enemies to the people of the province. That it should not be lawful for the Governor, his heirs and successors, and Council, or any of them, to make or raise war, or raise any military forces, or to levy sums of money, or impose any tax whatsoever, without the consent of the Assembly, neither should they (without such consent) send ambassadors, or make treaties, or enter into any alliances on the public account.

These provisions were in the nature of primary or fundamental articles, which were to form the foundation of government. It was farther provided and agreed, that upon the acceptance of these articles by Samuel Jenings, the General Assembly, proprietors and freeholders of the province would *accept* him as Deputy Governor. The conditions were agreed to by Jenings, he putting his hand and seal to the articles, and they were also subscribed by Thomas Olive, Speaker, by the order, and in the name of the General Assembly of the province.⁴

⁴ Grants and Concessions, p. 423.

The government being thus established, the Assembly proceeded at once to make other enactments. Most of the provisions in relation to the rights of individuals, in respect both to person and property, which were contained in the former concessions, were adopted anew, and put into force.¹ Regulations were also made prescribing the duties of the several officers. The Governor and Commissioners (in the same manner as the Commissioners alone, under the former concessions) were empowered to determine the rates and fees of the Public Register, Surveyor, and other officers of the province.² They were also to see that all courts established, or to be established, by the Assembly of the province, should execute their duties according to the laws; and to displace or punish offenders. They might suspend the execution of sentence passed upon any person, by any judge, justice or court, until the whole proceedings should be presented to the next Assembly, which Assembly, with the Governor, might grant a pardon, or command execution of the sentence. The Governor and Commissioners were also to superintend the divisions, sale and conveyance of lands, and to have charge of the execution of the laws relating to the estates of decedents, and the care of orphans, which laws were full and precise.

No additional regulations of importance were made in relation to the action of the Legislative Assembly, but the compensation of the members was determined anew. They were to receive *two shillings* for each and every day they should serve, this sum being paid, (as before) by the respective divisions in which they were chosen. To defray the public debts and other charges of the province, it was ordered, that the sum of two hundred pounds should be levied, to be paid in "coin or skins or money," and two persons were chosen as Receivers General, with authority to appoint their subordinates.³ Of this sum twenty pounds was to

¹ In a few particulars new provisions were made, but none that altered the spirit of the laws.

² The fees of all judicial officers were formerly determined by the Assembly, and no change in this respect appears to have been made.

³ The sum above mentioned was to be equally levied and proportioned upon the several tenths, twenty pounds upon each and every tenth; and every man to be assessed according to his estate real or personal, and all handicrafts, mer-

be given to the Governor, and five pounds (as a gratuity for his services) to the Speaker of the Assembly.

It was determined that the town of Burlington should be the chief town or head of the province, at which place the provincial courts, and the General Assembly, were to hold their sittings.

A body of Commissioners was also nominated and chosen consisting, besides the Governor, of eight individuals.⁸ After a session of seven days the Assembly adjourned to the first day of the second month, called April, 1682.

During this period another division or "tenth" had been taken up and occupied; this division, by reason that the first settlers had emigrated from Ireland, was called the "Irish Tenth;" it was reckoned the third in numerical order, and extended from the Pensaukin to Timber Creek.⁹ At the time appointed for the meeting of the Assembly, the house not being full, adjourned to the 14th, at which time another meeting took place; no business however was transacted, and the members agreed to dissolve the House, which was accordingly done. But directly afterwards a new Assembly was called which met on the 2d of May of the same year. The names of the Representatives who had been elected and chosen by the people within their respective tenths, were then returned by the Sheriff according to appointment.¹⁰ Thirty-four members attended, and the house was organized by the appointment of Thomas Olive as Speaker. By this Assembly

chants, and others to be assessed *at the discretion of the Assessors*. All persons who should neglect or refuse to bring in to the officers, the sum taxed upon them, by a specified time, should be fined at the judgment and discretion of the Commissioners, not exceeding forty shillings. This latter provision was annulled by the next Assembly.

⁸ An important part of the business of the Commissioners was the direction of measures for the settling and regulation of lands, and they immediately adopted a number of rules or "methods." *Grants and Concessions*, p. 435.

⁹ See Sharp's account in Mickle's *Reminiscences*, p. 48.

¹⁰ The choice of a "Sheriff" is not noticed in the proceedings of the previous Assembly, and as no jurisdictions or counties had yet been erected, the peculiar sphere for such an officer, according to common usage, would seem to have been wanting. It is doubtful what was the precise extent of the action of this officer, at the time.

the comparative advantages of general and district elections were considered a question that has frequently been agitated in latter times. Hitherto elections had been held within the respective tenths, but the members had been chosen from all the divisions without discrimination. But the Assembly now resolved that "it was their judgment and the judgment of the respective people by whom they were chosen, that the most regular way for preserving liberty and property by a lawful Free Assembly is, that each ten proprieties choose their ten Representatives where they are peopled; and that as the proprieties are, or shall be peopled, they have the liberty of choosing for each ten proprieties, so peopled, ten Representatives." The House resolved that twenty-four members, the Speaker being one, should make a quorum for the transaction of business.

For greater convenience in the transaction of public affairs, the province was divided into two districts or jurisdictions, in each of which courts were to be established and regularly held. Four Courts of Sessions were to be held yearly; in one of the districts at the town of Burlington, and in the other, at the town of Salem.¹⁴ Smaller courts might be called oftener if need should require, to be called by the Justices; but if a special court should be called, the party requiring it should pay for every Justice sitting at the

¹⁴ From the fact that members from Salem were in this Assembly, and that provisions were made by the Assembly including that portion of country, it is apparent that the relations formerly existing between Fenwick and the general body of proprietors, had become changed. The independent position of the former must have been wholly or partly relinquished. But in reference to this particular, there is a lack in the history of West Jersey which the author is entirely unable to supply. In what manner the difficulties which had heretofore existed between Fenwick and his lessees, were concluded, if concluded at all, is uncertain, but the country in dispute continued to be known as "Fenwick's Tenth." It is stated however (*Johnson's Salem*, p. 26,) that on the first of March, 1682, Fenwick conveyed a moiety of his proprietary to Governor Penn, of Pennsylvania, excepting and reserving therefrom to himself, his heirs and assigns, all that tract of country which was called Fenwick's colony, containing as was supposed 150,000 acres. Whether this was intended as a basis of a general arrangement, in which Fenwick was to be allowed to retain the land here reserved, and relinquish all claims to the remainder, is unknown, but it would seem not improbable.

time, three shillings a piece, and to the other officers of the court according to their ordinary fees, or more for extraordinary services.

The Council, consisting of ten persons of the province, were nominated, and chosen, together with the Commissioners, and the officers of the respective jurisdictions; nine Justices were appointed for the jurisdiction of Burlington, and four for the jurisdiction of Salem. Sheriffs were chosen for each, and also a Clerk and Recorder, and Constables were appointed for three of the tenths, none being chosen for Salem.¹² It was resolved and enacted that the next General Assembly should meet on the 12th of the third month, called May, and so yearly. After a session of four days during which several other enactments of minor importance were passed, the House adjourned to the 4th of November next, "unless there be necessary occasion to meet sooner."

The "necessary occasion" was supposed to arise, and the Governor, by the advice of his Council, summoned the Assembly to appear on the 26th of September of the same year. Twenty-eight members were present at the time appointed. It was then enacted that the election of Representatives should take place within the respective tenths on the 14th day of the second month and so yearly, at such time and place as should be most convenient. An enactment was also made providing for the settlement of certain suits in a kind of Court of Arbitration. In all accounts of debts, of slander, and all accounts whatsoever between neighbors, not exceeding twenty shillings, the arbitration of two indifferent persons of the neighborhood, should be tendered by a Justice of the Peace, who should have power to summon the parties before him, before the matter should be taken to a court, and if both or either of the parties should refuse to stand to arbitration, then the Justice might issue his warrant for the trial of the case at the court next ensuing.¹³ The present session con-

¹² Under the former concessions Justices and Constables were to be chosen by the people.

¹³ In the Convention that formed the present Constitution of the State of New Jersey, a motion was made by Mr. Jacques, one of the members, for provision to institute a court similar in some respects to the one here established; it was to be called "A Court of Reconciliation." The proposition was urged with some earnestness, but was not finally adopted. *Minutes of the Convention.*

tinued *two days*, and the House was then adjourned to the 1st day of the third month, 1683.¹⁴

The next meeting of the Assembly was one of importance. It commenced according to adjournment on the 2d of the third month, 1683. Thirty-seven members were in attendance; ten from the first tenth, and the same number from the second and from the Salem tenths, each,¹⁵ and seven from the third tenth. Thomas Olive was again chosen as Speaker of the House.

At the beginning of the sitting some enactments were made relating to the action of the government, or its respective branches.

It was enacted that the Governor, or his successors, should have no power to require the attendance of the Assembly, or any of its members, (when sitting,) at any place, without the assent of the House. That for the despatch of business, the Governor and Council should have the preparing of bills for laws, which should be promulgated twenty days before the meeting of the Assembly. That the *Governor, Council and Assembly* should constitute the General Assembly, which Assembly should have the affirmative and negative of all bills prepared by the Governor and Council, and that such bills should be openly read by the Clerk, and the content thereof be explained by the Governor, and then decided by yeas and nays; and that in the case of exceptions and amendments, the Governor and Council and Assembly should determine by a *plurality of votes, the Governor having a double vote*. All officers were to be chosen on the first day of the session. It was also provided that the Governor and Council should have the government of the *State* according to the laws, during the recess of the General Assembly.¹⁶ Several other enactments were made

¹⁴ An act was passed at this session for "the encouragement of learning and the better education of youth." It provided that the Island of Matinick (later the possession of Robert Stary,) should be given, and thenceforth to remain ever after, to and for the use of the town of Burlington, and to others concerned therein, within the first and second tenths, the rents and profits thereof be employed for the maintaining a school for the education of youth within the said town, and within the first and second tenths. (*Grants and Concessions*, 455.) It is believed that this property is still appropriated to the purposes here directed.

¹⁵ John Fenwick was one of the Representatives.

¹⁶ *Grants and Concessions*, p. 466. The chief administrative authority which,

laws, previous or posterior, to your passing a bill for the support of government, seems to me not very material; nor do I think that your passing a bill for the support of government, is a sufficient reason for me to give my assent to a bill that I do not think reasonable in itself; or that your not passing such a bill, is a sufficient reason for me to deny my assent to a bill I think to be so." Some of the measures of the Assembly, however, were acceded to, bills were passed which received the assent of the Council and of the Governor, concerning the acknowledgement of deeds, and for ascertaining the fees to be taken by the several officers of the colony. But in relation to the latter, a new difficulty arose; the bill was passed with a clause suspending its operation until the pleasure of his Majesty should be known; but the Assembly, with a sort of impatience for the enjoyment of that which they conceived to be sanctioned by justice, and which was allowed by a law of the province, resolved, that the act should be immediately published and applied.^s This course was strenuously resisted by the Governor; he demanded to know of the Assembly, by what authority they ordered an act not in force, to be printed as a rule for the government of the people. The Assembly replied, that they had not assumed any unwarrantable authority; that they only gave an opinion of an act which had passed the three branches of the Legislature, and that they did not think themselves accountable to

for the faithful fulfilment of their duties, and for limiting the period of their service. The latter had become necessary on account of the incautious or interested appointments made by the executive. All these would have been highly advantageous to the public interest, and the only ground of objection was, that they were calculated to lessen the influence and power of the principal officers of the province. The desire of his Majesty, in which the Governor appeared to participate, to retain the people in strict dependence, and make the province a profitable field for office, excited much discontent, and led the Assembly to measures which in some instances, may not have been the most prudent or proper.

^s A resolution was adopted "that the act for ascertaining fees passed by the Governor, Council, and General Assembly, as it has the approbation of the three branches of the Legislature here, ought to have due weight with the judges and all others concerned, and that they ought to take the said act for their rule to govern themselves by, until his Majesty's pleasure should be known, and that the said act be made public for the purpose aforesaid."

ny for their opinion; and that it would not be consistent with the dignity of the House, and the trust reposed in them, to give a further reply. But with this reply his Excellency was by no means satisfied, and his opposition was carried to an extent, that was not to be reconciled with his previous assent to the act. He represented to his Majesty, that it would operate to the injury of the province, the fees allowed therein being so much reduced that persons of character or capacity would not accept of offices in the several courts. The King's refusal of the bill was only delayed for a time, through the efforts of the agent of the province in England, and finally it was disallowed by his Majesty.

Another measure which was deemed important to the interests of the province, was an act for a new emission of bills of credit. The issue of these bills by loans, had been found to be advantageous to the people, and the interest accruing thereon had served for the support of the government. But the parent country was ever watchful that the interests of the colonists should be kept subordinate to its own, and a bill had been introduced into Parliament to prevent the issuing of paper bills of credit in the colonies, to be a legal tender in payments; under the pretence that such issues were injurious to English commerce.⁹ This bill was pending in Parliament. During this time an act was passed by the Assembly for making current forty thousand pounds in bills of credit, but with a clause suspending the operation until his Majesty's pleasure should be known. But the act was rejected by the Council on account of the pending prohibition in Parliament.¹⁰

⁹ A copy of this bill being laid before the Assembly, (in November, 1744,) they resolved that it was the opinion of the House that "if the said bill, or any of that tendency, should pass into a law, it would not only be an encroachment upon the fundamental constitution of this province, and the concessions made to the first settlers thereof, by his Majesty's royal ancestors, but also destructive of the liberties and properties of his Majesty's subjects now inhabitants of the colony, as also a great discouragement to the further settlement and peopling thereof, which must be vastly detrimental to the trade of Great Britain by lessening the consumption of manufactures."

¹⁰ It ought to be stated, that although the principal ground of the rejection of the act for the issue of bills, was the action that had been taken by Parliament, the Council objected to the plan itself. They said that the raising of money

make further assurance of the premises, to the purchasers. Hence the Assembly resolved that these sellers were bound to give the further assurance within the specified time, according to their contract and covenant. It was further resolved, that "forasmuch as the end of all governments is the good of the governed, and that in the Constitution of this colony there are some expressions and passages too strict, and which are found by experience, not to be so practicable or profitable," the Assembly might make from time to time such changes and alterations as they should seem meet; six parts of seven of the Assembly assenting thereto; only that the law of liberty of conscience, the law of property, the law of yearly Assembly, the law of juries, and of evidence, should not be changed.²¹ The Assembly directly proceeded to carry out its resolves. Samuel Jenings, by the free election and vote of the Assembly, was chosen as Governor of the province, and he immediately subscribed an engagement to act in that capacity "according to the laws, concessions and constitutions as they are now established in the province."

A number of persons were also appointed to prepare the instrument to be sent to London for Edward Byllinge to sign, and the individuals in England to whom the business should be entrusted were agreed upon.

Thus again did the people of this province assert their claim to entire freedom from all authority except such as had been instituted by themselves, in accordance with the provisions of the original concessions. In the following year, 1683, the resolutions that had been entered into upon the subject of government, were further pursued, and it was enacted and resolved by the General Assembly, that an instrument containing the state of the case between the proprietors of the province and Edward Byllinge, in relation to the people's legal and equitable right to the government of the province, should be directly transmitted to England, and also a letter to Byllinge himself. In pursuance of this design

* Some provision allowing such alterations would seemed to have been required in order to justify the course of the Assembly itself, for whilst they declared that the former concessions were the fundamentals and foundation of government, the provisions now adopted were different in many respects from those of the concessions.

it was further resolved at the ensuing session (held in March, 1684.) that an express demand upon Byllinge should be made for a confirmation of what he had formerly sold and conveyed, and the Assembly elected and appointed Samuel Jenings the Governor, and Thomas Budd to visit England, and conduct the negotiation there.²² Thomas Olive was nominated by Governor Jenings to serve as Deputy Governor until the next meeting of the General Assembly should take place. This meeting occurred in May of the same year, and Olive was then chosen as Governor, and the Assembly resolved that during the pendency of the application in England in relation to the government, affairs should "remain upon the same foot and bottom, and be managed in the same methods as formerly, until matters shall be controverted and determined." In the interim the internal regulations of the province were further determined: the rate of taxation upon real and personal estate was prescribed, and also the amount to be collected and the mode of collection. Assessors and Collectors of taxes were to be chosen by the people in each of the tenths, such officers having authority within their respective limits; and in case any persons should refuse or neglect to pay the amount assessed, within the specified time, the next magistrate might issue his warrant to distrain for double the sum taxed, together with the costs and charges. Authority was given to the people of the several tenths to levy taxes for making and repairing highways within their respective limits.²³

²² It was resolved that the sum of one hundred pounds should be given to Governor Jenings as a gratuity for and in consideration of his loss of time and absence from his own affairs "in his going to England to transact and carry on the public concern of this province, in relation to the government thereof." It was also resolved that one hundred pounds more should be provided for the payment of the charges and necessary expenses of the agents. For these sums the Assembly became responsible, but Samuel Jenings, Thomas Budd and Thomas Olive became bound for one hundred pounds on the public account, and ten other individuals entered as security for the remaining hundred. The money was advanced by Governor Penn. Certain lands in the province were appropriated for the final liquidation of this debt.

²³ Another tenth was by this time taken up and occupied, and Representatives appeared in the Assembly from the *fourth* tenth. The fourth tenth extended from Timber Creek to Oldman's Creek.

By the Assembly which convened in May, 1685, the resolution that affairs should be continued upon the same "foot and bottom" as formerly, was somewhat modified, by an extension of the powers of the executive body; it was resolved that the Governor, with the advice of his Council, might, for the present emergency, issue forth such proclamations and precepts for the preservation of the property and privileges of the people, as they might deem necessary, until the General Assembly should make further provision. But the suspense arising out of the "present emergency" was not greatly protracted. The mission of Governor Jennings and his associate to England was only partially successful. A full renunciation of the claims of Byllinge could not be obtained; a new charter indeed is said to have been given, but no important concessions appear to have been made, and soon afterwards a commission was issued by Byllinge appointing a Deputy Governor. This office was given to John Skene.²⁴

On the 25th of September, 1685, the General Assembly convened. Fifty members were in attendance, ten from the first, second, third, and fourth tenths, each, and the same number from the Salem tenth. Thomas Olive was chosen Chairman or Speaker. The Assembly resolved upon an acknowledgement of the commission of Byllinge to John Skene as Deputy Governor, yet this was done with a distinct reservation of "their just privileges and rights." The grant of Byllinge proved to be a source of embarrassment; there was an apparent reluctance to enter upon decisive action in relation to it, and such action was finally avoided by an early adjournment. The House resolved that on account of the "sharpness of the season" and several of the members being at a considerable distance from their habitations, and also as the matters before the House were of great weight, the Assembly would appoint a committee to be charged with the inspection of the new charter, and the bills prepared, who were to make report at the next meeting, when the House might give their "resuliment there-

²⁴Both Smith and Gordon state that William Welch had been appointed some time before, as Deputy under Byllinge, but that he was rejected by the Assembly. Thomas Olive was twice elected, and continued to be Governor from May, 1684, until September, 1685, when Skene was received.

of." It was then agreed that the House should elect and appoint such officers as might be necessary to assist the Governor in keeping the peace, and maintaining good government, and then to adjourn to some fit and seasonable time. It was also resolved that the new grant from the Duke of York ("now King.") of soil and government to Edward Byllinge, and also *the instrument from Edward Byllinge*, and proprietors, should remain in the custody of Thomas Olive and Thomas Gardner until further order. Before the adjournment, officers were appointed for the five divisions of the province, and also a Justice and Constable for Cape May.

What was the "fit and seasonable time" to which the Assembly was adjourned, there is nothing to show, but another meeting did not take place until the latter part of the year 1692. During this interval, various changes occurred in the general condition of affairs in the province. Whilst the regular authorities were suspended, a portion of power was exercised in some of the sections by the people themselves, with a view to the promotion of their own convenience and advantage. By legislative enactment, but two jurisdictions or counties had yet been established within the province, but during the recess of the Assembly, another division was made, by the voluntary action and agreement of the inhabitants themselves. The settlers within the third and fourth tenths finding themselves subjected to much disadvantage from the trans-action of public business at Burlington and Salem, resolved upon the establishment of a central jurisdiction, and for this purpose held a convention at Gloucester, in May, 1686.²⁵ In pursuance of their object, an instrument was framed and adopted which contains sufficient evidence that the people conceived their political competency, to be ample in extent. They determined the limits of the jurisdiction, the subdivision into townships, the constitution and powers of the courts, the times and places of sitting, with various other particulars.²⁶ The new division was called the

²⁵ Gloucester was one of the earliest settlements in the province, and a town was soon afterwards projected and laid out. It continued for many years to be the county town.

See *Mickle's Reminiscences*, p. 55 and 36.

²⁶ The jurisdiction was co-extensive with the limits of the third and fourth

county of Gloucester, and during the suspension of provincial legislation, the authorities of Gloucester continued to exercise a degree of authority, entirely sufficient to meet the exigencies of the time.

In the year 1687, a change took place in the provincial government in consequence of the death of Edward Byllinge.²⁷ Upon this event, Dr. Daniel Coxe, who was already largely concerned in West New Jersey as a proprietor, purchased the whole of the interest of the heirs of Byllinge in the province. In this was included both the right to property, and also the doubtful claim to the powers of government.

On the 5th of September, 1687, Coxe directed a communication to the Council of Proprietors in the province, apprizing them of the transfer that had been made, and explaining at length his own expectations and views.²⁸ He directly advanced a claim to the

tenths, reaching from the Pensaukin to Oldman's Creek. Four courts were to be held yearly, alternately at Gloucester and Red Bank.

Woodbury Records, given by Mickle, p. 85.

²⁷ Byllinge had been one of the most prominent actors in the affairs of West New Jersey, and in the early period of his engagement had manifested an earnest desire to promote the interests of the province and the happiness of the people. He had been a party to the first concessions, and had thus been instrumental in erecting a frame work of government of a most liberal character. It is much to be regretted that his subsequent conduct was not such as to confirm the expectations excited by his earlier course. He may at first have accepted authority from the Duke of York, with an intention to convey it to people, to whom, according to his own agreement previously made, it properly belonged. His first step may thus be accounted for and partly excused, but his subsequent retention of authority can in no wise be palliated, and is only to be explained upon the supposition, that he was too open to the seductive influences of place and of power.

²⁸ The Council of Proprietors were individuals chosen from the general body. The whole number of proprietors had become so large, and the members were so scattered that the transaction of business had become extremely difficult. To obviate this, it was resolved at a meeting of the proprietors on the 14th of February, 1687, that there should be constituted a Proprietary Council, to consist of eleven Commissioners, to be annually chosen from among themselves. These Commissioners were fully empowered to act in all such affairs as concerned the general body, and two shillings a day was allowed them as a compensation. In November, 1688, the Council agreed upon a system of rules relating to the

entire direction of affairs in matters of government. He stated, that he had advised with the most eminent counsel, by whom he was instructed, that though the concessions which had been agreed to by Byllinge might have bound him *in conscience* during his life, yet that the obligation would not survive so as to be binding upon his heirs, and of consequence, was not binding upon Coxe himself. In support of this view it was urged that the original concessions agreed to by Byllinge had been made, previous to his possession of the rights of government. This argument, whether sustained by the opinions of "the most eminent counsel" or not, was singularly defective; it had no other foundation than mere assumption. It assumed that the rights of government were wholly derived from the grant that was made to Byllinge by the Duke of York. But before this grant was made, Byllinge and his coadjutors believed and represented themselves to be possessed of this power, and in their concessions had conveyed it in the fullest manner to the people of the province. If then, this authority was possessed at that time, and was conveyed according to the terms of the concessions, the powers of government became vested in the people and remained in them, and could not afterwards be exercised by Byllinge, or be conveyed by him to another party. And if it be supposed that there existed any defect in the powers of the grantors at the time the concessions were made, and Byllinge in consequence of subsequent events, came to the possession of further ability, he was bound not only "in conscience," but also in honor and honesty, to make good his former agreement. But in fact, the grant of the Duke of York was no more than an acknowledgment of rights and powers which were previously held, and which had been previously enjoyed and exercised, though with great

ness and surveys of land. In this manner the land affairs of West New Jersey continued to be directed for a long period, and indeed the authority is recognized even at the present time. The first Council were Samuel Jennings, Thomas Coxe, William Biddle, Elias Farr, Mahlon Stacy, Francis Davenport, Andrew Cheson, William Royden, John Heading, William Cooper and John Wills. It was to this body that the communication of Dr. Coxe was directed. During the recess of the General Assembly, the proprietary body was probably considered as the highest authority in the province.

impropriety and injustice, a different distribution of these powers was ordered and made.

Information was also given by Coxe that he had consulted with several of the principal proprietors, and that he had been urged by them to purchase the government and the property, and that he had afterwards proposed, if any way could be shown, that the government should be assigned to the proprietors, or to particular persons, or the people; he desiring no more than that he should be merely secured for what he had actually disbursed. But little difficulty need to have occurred in finding a "way" in which an adjustment of the matter in question might have been made. If, indeed, Coxe had acquired a doubtful and disputed right, it might not be found easy to recover the amount of his outlay, in any other manner than by claiming that to be sound and good, which in reality was imperfect and faulty. A full confirmation of the original grant which had been agreed to by Byllinge, would have been just as a primary step; if afterwards, the entire amount of disbursement could have been reached, no injury would have been sustained by any; but without this, if interest should be secured, a wrong would be committed. In the communication of Coxe it was further set forth, that as no proposals had been made to him, he should enter upon the government himself, and he distinctly stated that "as all the gentlemen of the law who have been hitherto consulted, do unanimously agree that the government of the province of West New Jersey, is legally in me as full as Pennsylvania in Mr. Penn, or as East Jersey in the proprietors there, I thereupon assumed the title of Governor, and lay claim to the powers and authority thereunto annexed, and am resolved, by the assistance of Almighty God, to exercise the jurisdiction by his Royal Highness, his last deed or grant unto me conveyed, with all integrity, faithfulness and diligence." He also declared his full willingness to confirm the civil privileges and rights which had been given in the original concessions of the proprietors, and to cause them to be inviolably observed; but in regard to the form of government, he remarked that "as the government of England is acknowledged by all intelligent and disinterested persons, to be the best of constitutions, I do hereby declare my full and free approbation of such constitution in your

province." He declared that he should *confide* upon the Assembly all powers and privileges consistent with the ends of good government, the redressing of grievances, and promoting the peace and prosperity of the province. He also desired that information might be given him as to the most proper mode of establishing the Assembly, and of appointing the several officers, and gave an assurance that all reasonable expectations and requests should be complied with; and that the officers appointed by Byllinge, or who had been chosen by the people, should be continued in their respective places and employments.

From the above particulars it is entirely manifest that all authority in the province, in respect to government, was claimed by Coxe, in virtue of the purchase he had made from the heirs of Byllinge; nothing was left to the people as *rights*, though liberal offers were made to them as *grants*.

But the exercise of the powers of government either by the people or by the new claimant, was suspended for a time by interference from an entirely different quarter. The release which had been made by the Duke of York had served to relieve the province, for a period, from further interruption from that source. But the Duke had now become King, and notwithstanding his former assurances and grants, he again attempted a resumption of power, as has been noticed in the history of East Jersey, differences had risen between the people of that province and the officers of the crown, in the enforcement by the latter, of the navigation laws of England. In consequence, a writ of *Quo Warranto* had been sued against the province, and after ineffectual resistance, the proprietors of East Jersey had resolved, upon certain conditions, to surrender the government to the King. West New Jersey was not formally involved in the process directed against the adjoining province; yet it was the design of the King, whether with, or without a formal procedure, to reduce the whole of the country to a state of dependence. In the condition of affairs existing in West New Jersey, the body of proprietors or other inhabitants, and apparently, but little to lose in a surrender of government upon the terms proposed, all authority being claimed by one individual. This individual, Coxe, was largely interested, himself, in the property of the province, and probably regarded his interest

in this respect as of too much importance to be hazarded by a tenacious adherence to his claim to the government. A surrender was therefore made in April, 1688, the same time as in East Jersey, and upon the condition, as in the other province, that the rights of property should remain undisturbed.

The whole of New Jersey, with New York and New England, was placed under one government, to be administered by the well known Edmund Andross. Orders were transmitted by Andross, through his Secretary, to John Skene, to receive and take charge on his behalf, of the public records of West Jersey.²⁹ A demand was accordingly made upon the Council of Proprietors for the delivery of the papers and records in their possession. This demand was considered in a meeting of the Council held on the 10th of August, 1688, and it was then resolved "that all records relating to government may be delivered according to the Secretary's order, but such as relate to lands, they judge to be the property of the proprietors, and that they ought to remain with them, and hope that the Governor is already satisfied therewith."³⁰

On the 18th of August Andross himself appeared on the province; he issued a proclamation ordering that the revenue should still be collected, and also, that the several officers of the province should continue in their places and employments.³¹ Thus was the province subjected to royal government, which however, as will be seen, was but brief in its duration. The revolution in England soon followed, and the consequences were not long in appearing in the American provinces.

²⁹ It is stated by Smith, that Skene died in December, 1687, but from the transaction above mentioned, he appears to have been acting as an officer in 1688.

³⁰ Smith's New Jersey, p. 202.

³¹ Whitehead, p. 112.

CHAPTER XIV.

RESUMPTION OF GOVERNMENT IN EAST JERSEY.—RESUMPTION IN WEST JERSEY.—FINAL SURRENDER.

AT the first rumor that the Prince of Orange had landed in England, a flame burst out in the American colonies. In Boston the people assembled in arms, and those "public robbers," as Andross and those who had acted under him were called, were seized and made prisoners, and Andross himself was soon afterwards stripped of all his authority. The Governor and Magistrates of the colony, with Representatives from the town, assumed the government until the pleasure of the new King should be known. The new Monarch approved of their proceedings, and directed them to continue the administration of government until the same could be settled in a manner most conducive to his service and the security and satisfaction of the colony.¹ Connecticut obtained the opinion of three of the most eminent lawyers in England, that their involuntary submission to the government of Sir Edmund Andross did not invalidate their charter; and that the same, not being surrendered under the common seal, and such surrender duly enrolled of record, nor any judgment entered against it, the corporation might lawfully execute the powers and privileges thereby granted. Hence this colony as well as Rhode Island, continued their old forms of government under their charters. It is possible that had a course of proceeding like to that pursued in these colonies, been entered upon in East New Jersey, a similar result might at once have been reached. But the situation of affairs was such as to prevent a decisive attempt. There was a lack of unity in action, if not of feeling, in the body of proprietors, arising in part from their local division. It is probable too, that

¹ Judgment having been actually rendered against Massachusetts, its former charter was not finally restored.

Parkin's History, vol. 1, p. 129.

the prevailing influence, so far as it could be gathered, was rather in favor of quiet and peace. Barclay, the Governor, was not of a nature to urge or direct a struggle for political advantages. Beside this, although the late King had but illy deserved their kindness, there yet existed a lingering attachment to him as the original grantor of the province, and some reluctance was felt to make an application to the Prince who had driven him from his dominions and his throne. But more than all, there was a want of interest and attachment between the proprietary body and the people themselves. The government had not acquired a hold upon the affections of the colonists; many of the inhabitants indeed were really averse to the existing authorities, and therefore if no direct attempts opposing a restoration of the government were made, nothing was done by the people to promote it. In consequence, a kind of negative position was maintained for a time; the course of events was awaited.

In May, 1689, a summons was received from the Lieutenant of Andross, (who was yet at the head of affairs in New York,) requiring the authorities of East Jersey to attend a conference in relation to the state of the government. Hamilton, the Deputy Governor, (who had been continued in office,) with a number of the Justices of the province, complied with the call, but no decisive determination was arrived at. Feeling the difficulty of his position, Hamilton resolved upon a voyage to England, in order to consult with the proprietors there, and to agree upon a course which should determine his future proceedings. He departed from the province in August, 1689; he left no deputy, but continued to retain his authority.² On his voyage he was taken prisoner by the French and was detained for a time, and upon his arrival in England, his office as Deputy Governor was resigned. On account of these occurrences the province of East Jersey was left for a period without a regularly appointed head to direct the proceedings of government. But the several officers that had formerly been appointed, remained in their places, and continued in the exercise of their duties; the machinery of government con-

² He appears to have been in office so late as May, 1690. *Whitehead*, p. 129.

tinued in action although it had become imperfect in form.³ After the resignation of Hamilton and the death of Governor Barclay, (which latter event took place on the 3d of October, 1690,) it became necessary that some decisive measures should be taken for the maintenance of order. The entire success of the attempts in other colonies for a full restoration of their former privileges and rights may have strengthened the resolves of the proprietary body; accordingly, they resumed the direction of affairs, and proceeded to re-establish the government of the province. They appointed John Tatham as Governor. But the want of agreement between the proprietors and the people, created an early impediment. Whether the inhabitants preferred a continuance of their former situation to a renewal of the proprietary government, or whether there were solid objections to the present appointment sufficient to warrant opposition, is not easily determined. But Tatham was not accepted in the province; the people declared that they ‘scrupled to obey.’ In the following year Colonel Joseph Dudley was appointed; he met, however, with the same reception from the people as his immediate predecessor.⁴ But this difficulty was finally removed. On the 25th of March, 1692, Andrew Hamilton, the former Deputy Governor, who still continued in England, received from the proprietors the appointment of Governor. During his former residence in the province, the prudence and steadiness he had manifested, had rendered him acceptable to the people, and his present appointment and return, contributed in a great degree, to the firmer establishment of the proprietary government. John Barclay, a brother of the late Governor, who had resided

³ Some authors have represented that a complete suspension of all government took place at this time, the people being in this respect, merely in “a state of nature.” But such representations are not strictly just. The suspension of government was never complete, and within the period of *partial* interruption, both Tatham and Dudley were appointed to office, but were rejected by the people. *Whitehead*, p. 130.

⁴ Tatham was appointed nearly at the same time to be Governor of *West* Jersey, where he resided, but was there rejected on account of his “Jacobite principles.” This was probably the ground or the pretence of his rejection in the other province; whether any such suspicion attached to Dudley does not appear.

for some years in the province, was appointed Receiver and Surveyor General, and to complete the number of officers, Thomas Gordon was placed in office as Secretary and Register, being the Deputy of William Dockwra, who held the chief place under the proprietors, in England.

Governor Hamilton arrived in the province in September, and his reception was such as to go far towards relieving the colonists from the suspicion of factious opposition to the government, which their previous course might possibly have raised. The Governor entered at once upon the duties of his office, and appointed his Council from among the most prominent men of the province.*

On the 28th of September, 1692, the General Assembly convened. The general interests of the colony were brought into notice, and various acts were passed to meet the circumstances existing at the time. The scruples or questions that might have arisen, on account of the several changes that had occurred in the government of England and of the province, were forestalled, by a general confirmation of previous enactments, excepting only such laws as had been formerly, or were now expressly repealed.

For a time, an appearance of settlement and quiet was exhibited in the province, but it was soon interrupted by other events. The old subject of dispute relating to the titles of land was again revived. Although this question had been repeatedly and definitely settled by declarative acts of the proprietors, and of the Assembly, it still had not been brought to the notice of the courts, and no judicial opinion had yet been given. But in 1695 the matter was formally determined in the courts of the province, and a judgment was given adverse to the party claiming by the Indian right. But the decision failed to produce the effect that might have been hoped, and that might be expected. An appeal was taken to the King in Council, and there, upon the ground of some informality in the previous proceeding, the decision of the provincial court was annulled; and thus this fruitful source of dissension was opened afresh. Increased unsettlement was the consequence.

* They were Captain Isaac Kingsland, Andrew Bowne, John Inians, David Mudie, James Dundas, John Royce, Samuel Dennis, John Bishop, and Lewis Morris.

Not long afterwards another unfavorable circumstance occurred. Governor Hamilton was in general favor with the people, and had also acted with faithfulness toward the proprietors; and his continuance in office seemed likely to be highly beneficial in effecting restoration of order and harmony. But in 1697, a law had been enacted by the English Parliament requiring that all proprietors of colonies should present their respective Governors to the King for his approval, and that no other than a natural born subject of England should be admitted to serve in any public places of profit and trust. The law itself was an exhibition of contracted policy, and it was complied with by the proprietors of East Jersey with a degree of promptitude that would almost warrant a charge of extreme subserviency. Without awaiting the decision of the King in the case of Hamilton, (who was a native of Scotland,) they at once removed him from office. Notice was given to the Council of the removal, accompanied by a declaration that it was considered unavoidable, and was much against the inclination of the proprietors. It proved to be greatly injurious to their interests.

Jeremiah Basse was appointed as the successor of Governor Hamilton; he produced his commission to the Council of the province on the 7th of April, 1698. It was understood that the assent of the King had been given to the appointment. The new actionary entered upon his duties by publishing a proclamation directed to the officers and people of the province. It set forth the importance of an orderly and moral deportment for the preservation of peace, and for the support of the government of his Majesty, who was said, "hath so often exposed his Royal person to eminent danger, to reduce us from the growing power of Popery and arbitrary government." All persons were prohibited from cursing, swearing, intemperance, and other immoralities which were named; and all officers were commanded to enforce the laws against such should offend. But no long time elapsed before difficulties began to arise. It was discovered that the Governor's appointment had not been approved by the King, as had been represented at the time.⁵ Beside this, the necessary confirmation from the

⁵ The proprietors afterwards stated in a petition, that upon the appointment

proprietors themselves was wanting, ten only having given their assent, whilst sixteen was the number required. On these accounts, some of the proprietors in the province refused to acknowledge the Governor's authority, and a similar disposition was shown by the people. A part of this opposition was owing, or was attributed, to the displeasure that was felt at the hasty removal of Hamilton, and some even insisted that the latter was not really or fairly superseded, and hence that *he* in fact was the Governor of the province, and that in his absence the government should be conducted by the Council. Instead of seeking to remove the defects which really existed in his commission, and commending his authority by a calm and steady deportment, Governor Basse appears to have sought to secure his position, by opposing party to party. Wanting the full support of the proprietary interest in the province, he gave his countenance to those who had always been opposed to the proprietary government, and thus, his influence operated indirectly to weaken and subvert the authority under which he was acting. At the same time he was reduced himself, to a situation of the most wretched dependence. Some of the laws enacted by the Assembly were directly opposed in spirit, if not in terms, to the proprietor's regulations and instructions, yet the Governor gave them a ready approval.⁷ Whilst by such a course of conduct he had forfeited the confidence of all, and was left without substantial support in the province he was obliged to encounter opposition from without. Recent enactments had been made by the Assembly for the encouragement of trade, and the establishment of a port and custom house at Perth Amboy. This led to a renewal of complaint from the authorities of New York, and of representations to the King, of the great advantage that would be gained by annexing New Jersey to New York. The unceasing urgency of the authorities of the latter, upon this subject, affords an instance of most aggravate

of Basse they had received instructions from the Lords Justices, and Lord Commissioners of the Treasury, for the Governor's conduct, which they state had been produced and published as evidence that the Governor had been appointed with the knowledge and full consent of his Majesty, and that only an express approbation in writing was wanting. *Grants and Concessions*, p. 59.

Whitehead, p. 140.

illiberality toward a neighboring province.* That a regard to their own advantage was the true motive by which they were actuated, though masked beneath a professed anxiety for his Majesty's interest, was no doubt perceived; yet the King was not likely to inquire with much care concerning the reasons of any suggestion, if satisfied that it tended to the benefit of the Crown. Hence a disposition was manifested to impose new restrictions upon trade in New Jersey, notwithstanding the evident injustice and the declared illegality of the course. Beside the former decision of Sir William Jones in a similar case, an opinion was now given upon this point by two eminent authorities, Sir John Hawles and Sir Cresswell Levins.² They pronounced against the impositions of any customs in the province, except such as were imposed by act of Parliament, or their own Assembly. But it was not a decision, it was not knowledge, that was wanting; the case was one of sufficient clearness; no one could then have supposed that the imposition of customs by Royal authority was consistent with the laws of England, and still less with the privileges that had been granted to the people of the province. But it suited the

* The Governor of New York complained that "they are now making war upon us in point of trade, they will draw all the shipping thither and establish free port, to the great prejudice of this place, and sink the trade of it, they say no duty to the King, and all will flock there." *New York Colonial Papers*.

² These are mentioned as "Crown Lawyers" by Chalmers and Grahame, by whom it is also stated that the question was submitted to these authorities by the government, and that the claims in question were afterwards abandoned. Whether they were Crown Lawyers or not, is uncertain, and not important, neither is it of great consequence by whom the application to them was made; their decision was probably given without any regard to the parties concerned, and was certainly just, as regarded the principal point. But if these persons were the legal officers of the Crown, and gave an opinion as such, it would seem the more extraordinary that no regard should have been paid to the decision; it is certain that the exactions were afterwards continued. It is stated indeed, by the authors just mentioned, that the demands were made under the authorities of the Assembly of New York, but nothing appears to confirm this opinion, it is more probable that they were made under express authority from the King. It is in any case clear, that instructions from the Crown were subsequently given, calculated and designed to obstruct the trade of New Jersey.

Whitchend, p. 143.

purposes of the authorities of New York to urge that restrictions should be laid upon New Jersey, and it suited the views of the King to accede to the proposal. In 1697, instructions were given to Lord Bellamont, the Governor of New York, to prevent the trade between the Indians and the inhabitants of East Jersey. Very soon afterwards he received another despatch or direction from the Crown, denying the rights of both East and West New Jersey to the privilege of ports, and enjoining upon Bellamont "to take care that the rights and privileges of New York be not infringed," and a proclamation was issued in accordance thereto.

Governor Basse exhibited in relation to these pretensions and claims a more correct appreciation of his duties than he had formerly shown. He published a counter proclamation, and insisted upon the rights of the province to freedom of trade, and a vessel that lay at Perth Amboy was loaded by his orders, and directions were given for her speedy departure.¹⁰ But the Governor of New York now acted again the same part that had been performed by his predecessor Andross, ten years before. The vessel when on the point of departure, was seized by an armed force and conveyed to New York. This outrage claimed the attention of the Assembly of East Jersey, and a law was enacted for raising the sum of six hundred and seventy-five pounds, by a general tax, to be used "not only to remonstrate the injuries already done us, but also to avoid the like incursions in future." Agents were appointed to prosecute the affair, and a part of the amount was to be employed "to gratify the best and ablest counsel in the law, the better to state and represent our case." It is doubtful whether this amount was collected;¹¹ but whether or not, the "case" was afterwards determined; it was brought in 1701, before the Court of King's Bench, and a decision was given by which the rights

¹⁰ It is intimated by Whitehead, that a part of the spirit manifested by the Governor on this occasion, proceeded from personal interest, he being directly concerned in the vessel or cargo.

¹¹ The enforcement of the law was objected to, in as much as the money was to be entrusted to the adherents or personal friends of the Governor, in whom the people had no confidence; they doubted whether the money would be applied "for the country's good." *Newark records, in Whitehead*, p. 146.

and claims of East Jersey were fully sustained. But the decision came too late to be attended by any important advantage.

Though the conduct of Governor Basse in the management of these affairs may have been more in accordance with the views of the people than were his previous acts and course, they still were no nearer to an acquiescence in his rule. On the contrary, the opposition against him soon ripened into actual revolt. The Governor directed that the most daring of the offenders should be committed to prison, but they were quickly liberated by their associates, by force. The public officers of the province were insulted and abused, and absolute anarchy seemed to be almost at hand. In alarm for his safety, or in the hope of obtaining the means of redress, the Governor resolved to leave the province, and in May, 1699, he departed for England, leaving in his place a Deputy Governor. In his final act, the selection of a successor, Governor Basse would seem to have been willing to perpetuate in the minds of the colonists, the remembrance of his character and acts. Andrew Bowne, the Deputy, had always been known as one of the prominent opponents of the proprietary government. But the authority obtained by the latter was too slight to be seriously opposed, or much respected, and a state of indifference succeeded the former excitement.

After the arrival of Governor Basse in England, the proprietors resolved upon the re-appointment of Governor Hamilton. A decision had been given by the officers of the Crown, that the act excluding foreigners from office, did not apply to the natives of Scotland. But a new objection to his confirmation in office had now arisen. A trial was about to be instituted in the courts of law to test the claim of the proprietaries to the government of the province, and until this should be decided, no formal assent could be obtained, though the appointment of Hamilton in the interim, was not objected to. At his arrival in the province, no open opposition was made to his resumption of authority. But the time for harmonious action had passed. The tendency to disorder had become so strong, that if no real objection could be found against the established authorities, a pretext would be made. The fact that the appointment of Hamilton had not been confirmed, began to be urged against him, and transactions ensued of a

character so tumultuous and violent, as to fix upon the period, the designation of "the time of the revolution."¹² Soon afterwards a long memorial was prepared and addressed to the King, complaining of the wrong which it was said the people had endured. It set forth that the proprietors had formerly allowed the province to remain without any government for three years, and that at a time when it was exposed to danger from war.¹³ It also set forth as matter of complaint, that after removing Governor Hamilton from office in obedience to an act of Parliament, the proprietors had now returned him again as Governor, though the disability under which he labored had not been removed, and that other officers were also in the same situation; and the petitioners asked that his Majesty would order that a fit person, qualified according to law, might be commissioned as Governor. These petitioners failed to represent, that the suspension of government of which they complained, so far as it really occurred, was owing in great part, to acts of the people themselves; and also, that they had formerly been extremely desirous that Governor Hamilton might be continued in office, notwithstanding the disability which they now alleged to exist. But in truth, the real object of these petitioners, or many of them, was to escape from the restraints and obligations they were under from the existence of the proprietary government. Numbers hoped to be freed from all further questioning as to their titles, and from all demands for the payment of rents. The very same opposition to government which arose at the beginning of the colony, now, after being checked for a time by authority, or appeased for a while by concession, was ready again to break forth.¹⁴ Some of the colonists indeed, were well

"It is no more than just to the people to state, that open opposition to Hamilton began to be manifested after the dissolution of the Assembly by him, on the ground of an informality in their proceedings. Yet opposition was previously designed, as was manifested by the Assembly at their first coming together.

The allegation, as has already been shown, was almost wholly unfounded.

The situation of the Governor and the views and objects of the people are fully set forth in a letter from Hamilton to the proprietors, dated June 1st, 1700. He stated himself to be "at a great loss for want of advice from you how far you have concerted the affairs of the surrender, the people here proposing to themselves that they will be upon a level with you when the government is out

affected, and did not approve of the measures pursued, but their numbers or influence were not sufficient to work a change in the general feeling, or to arrest the course of public affairs. Faction had become too strong to be longer controlled. The Governor,

of your hands, may purchase lands from the Indians as well as you, and throw up their patents and hold by their Indian purchase. While the people propose to themselves such advantages by the governments being in the hands of the King, you cannot expect they'll raise money to defend it, nor any thing wherein they suppose you will share the advantage with them. Finding no hopes of raising money, I forbore calling our Assembly till their own was to sit of course, which by an act passed in Mr. Basse's time, is to meet yearly by proclamation on the fourth Tuesday in May. I accordingly called them at that time, and upon their meeting the whole House came to me and the Council. As I was beginning to speak, Capt. Bowne told me he was ordered by the Representatives to ask by what authority I called them together. I told him he could very well have answered that question himself, having heard my commission read upon my arrival. Mr. Royse asked me if I had the approbation as the act directs. I told him I was much surprised to hear him ask that question, he himself having said in Mr. Basse's time that this point was for the King to inquire into, and not the people, and also that he had heard upon my first coming what steps had been taken to obtain an approbation, and the reason that obstructed it. But since he was not so just as to inform the Representatives what he knew, I would, and I accordingly related the whole. That *in order to break their ports*, the Crown had of late questioned the proprietors right to government, looking on it as unaccountable to be a government, and not allowed a port as all other distinct colonies in America are. That accordingly, the Lords of Trade, to whom he proprietor's petition was referred, had advised the King to consent to a trial in Westminster Hall for their claim to both, which report was confirmed by the King, and referred to the Attorney General to direct the manner of trial. That after the report, I had applied to the Council of Trade and told their Lordships that since they were pleased to scruple the proprietor's title to government, I should be unwilling to act under any commission their Lordships should account unwarrantable, and thereby draw myself or the proprietors under any inconvenience. But the Lords were pleased to tell me that they questioned the proprietor's right to government, yet they did not intend that as an inhibition on the proprietors, or a forbidding them to act further until the trial betwixt them and the King were issued, or that the terms of the surrender should be concerted, they being sensible that people could not be without government, and therefore if I acted according to the laws of England, the proprietors would be sufficiently justifiable in commissioning me, and I safe to act, but that granting an approbation was a recognizing the proprietor's title and by consequence giving away what they accounted the King's right. Notwithstanding this ex-

with all his prudence and firmness, had become nearly powerless. The proprietary body too, had become numerous, and were so divided in interests and aims, that *their* Councils, even at this period of danger, were uncertain and wavering, and their resolves but feebly pursued. Without an entire change, but one course seemed open before them, and that course which had already been contemplated, was now pursued. The government was surrendered.

During this time the course of affairs in West New Jersey had been tending to a similar issue. The conditional surrender of government in the western province, and the assumption of authority by Sir Edmund Andross, had caused but little alteration in the general state of affairs. The officers formerly appointed, were continued by Andross, and the government (so far as the provincial government continued in force,) was administered by them for the time. As before noticed, the Legislative Assembly was suspended. Coxe, in his capacity as proprietor, continued to be actively concerned in the management of business. Subsequent to the surrender, extensive purchases of land were made by him from the natives, and these agreements were assented to by the Council of Proprietors, and provision was made for refunding the purchaser.¹⁵ An agreement was also concluded on the 5th of September, 1688, between Coxe and Governor Barclay, respecting the limits of East and West New Jersey; Coxe insisted that the boundary formerly agreed upon was unjust to the western proprietors, and a new division was projected, which received the assent of the Council of Proprietors in West Jersey, in December, 1688. The contract however was not carried out to effect.¹⁶

planation, Mr. Royse insisted that they were not safe to act without an approbation, which put me upon the necessity of plain dealing with them. I told them I was not a stranger to the point they were driving at, and that the getting the government out of the proprietor's hands, they accounted the means to obtain it, and it was *that*, and not the want of an approbation, was the reason of their pretended scruples." Whitehead, p. 223.

¹⁵ Three several purchases were made, dated respectively the 30th of March, the 30th of April, and the 16th of May, 1688. They were lands in the southern part of the province, including part of the present counties of Cumberland and Cape May.

¹⁶ It is somewhat doubtful in what precise character the contracting parties at this time considered themselves as acting. The government in both provinces

The renewal of the proprietary government in West Jersey was equally tardy, and attended with no less difficulty than in the eastern province. In the former indeed, the want of harmony between the authorities and the people, seemed even greater than in the latter. Coxe had arrogated all power, asserting that the entire government of the province was legally in him; but the claim he had acquired, when held by Byllinge, had been expressly denied and rejected by the people through the Representative body, and there was now no disposition to aid in any attempt which would tend to its confirmation. The people too, in some portions of the province, as has been seen, had taken the management of affairs, in part, into their own hands, and had become somewhat familiarized to the idea and the practice of independence in government. The county authorities had exercised control in matters affecting their particular and relative interests.⁵ But the claimant of chief authority in the province, was little inclined to allow any part of the advantage he had come to possess, to remain unused; and only awaited an opportunity to renew his endeavours for the establishment of his claim to the government. The proposal he had made for the institution of a rule according with the principles of the "English Constitution," was not now

had then been surrendered, and Andross had taken possession thereof. The former Governors, then, would seem to have had no other authority than as the representatives and holders of *property*; but in name they acted as *Governors*, and a high authority. (Whitehead) represents Barclay as making the agreement on that character. And as the surrender had been only conditional, the former authority might yet survive.

Nearly at this time Gloucester and Burlington adjusted the boundary between them, as appears in the following extract:— "At a court held at Gloucester on the first day of 4th month, 1689, the Grand Jury having information that the persons formerly appointed by the proprietors for fixing the line of division between the counties of Burlington and Gloucester, have agreed upon a course that shall determine the same; do in pursuance thereof order that upon the seventeenth day of this instant, the said line shall be run, and that Thomas Sharp shall be Surveyor for the doing thereof. And also, that it's judged convenient that the people in Burlington county may have advice thereof that they may appear to see that affair completed, if they please. To all which the bench assents and order the procedure thereof in manner above said."

Woodbury's Records, given by Mickle, p. 44.

renewed; the former basis of government was allowed to remain. In 1690, John Tatham was appointed as Deputy Governor.¹⁸ But the people of the province, as was the case in East Jersey in regard to the same individual, "scrupled to obey;" the Jacobite principles of the Deputy were considered so objectionable as to warrant a refusal to acknowledge his authority. The source also from which his authority was derived, may possibly have formed a part of the objection.¹⁹ Directly afterwards Edward Hunloke was appointed, who continued in office until the province was passed into other hands.²⁰ Either disheartened by the difficulties he had experienced or tempted by an offer that would cover the "disbursements" he had made, Coxe resolved in the following year upon a sale of the whole of his interest in the province. He accordingly made an agreement in the year 1691 with a body composed of forty-eight persons, designated by the name of the "West Jersey Society." To this company the whole of the claim of Dr. Coxe, both to government, and property was conveyed, he receiving therefor, the sum of nine thousand pounds sterling. In consequence of this agreement, the West Jersey

¹⁸ The period of the appointment of this officer is not entirely determined, but it is believed to have been as above stated.

¹⁹ Gordon states that the Deputy was rejected by the Assembly, but at this time the Assembly was suspended; it did not meet until 1692.

²⁰ Hunloke appears to have continued in office *after* the sale, either by sufferance, or by appointment from the West Jersey Society. In March, 1692, he presided in the courts of Gloucester, as Deputy Governor. His name also appears as a presiding officer in these courts, and also with the title of Deputy Governor, in December, 1692, and in September, 1694, which periods were subsequent to the appointment and the arrival of Governor Hamilton. He has hence been represented by different authors, as holding the appointment of Deputy Governor as late as 1694, which could not possibly have been the case, unless by an appointment from Governor Hamilton, and there is nothing whatever to favor the opinion that such an appointment was made by him. But in the records of the above court, it is stated at the later periods above mentioned, that Edward Hunloke, Deputy Governor, was present, and that a commission *from the Governor*, appointing Edward Hunloke, John Tatham and others, Justices of the Peace, was then read. Hence there is reason to believe that Hunloke appeared on these occasions, merely as a judicial officer, and that the title of Deputy Governor was only continued by courtesy. It is certain that at a still later period he was appointed one of the provincial judges.

Society assumed political power in the province. They set forth that "the hereditary government of the province of West New Jersey, in America, which by due and legal right was vested in Daniel Coxe, Esq., by conveyance duly executed, hath been by him assigned and transferred to us." In pursuance of this claim the society appointed a committee consisting of ten persons, to whom authority was given to nominate and appoint a Deputy Governor for the "well ordering and governing the province."²¹ On the 11th of April, 1692, the committee appointed Andrew Hamilton to be Governor, and issued their commission to him as such.²² He was to continue in office for one year, and until a successor should be appointed. Hamilton arrived in the latter part of the same year, and entered at once upon office. The character for prudence and moderation which the present incumbent had gained in the neighboring province, together with the obvious disadvantage of a continuance in the unsettled condition existing at the time, may be supposed to have influenced the people to acquiescence in the appointment, and to submit to the authority of Hamilton. On the 3d of November, 1692, the General Assembly was convened, and legislation was again resumed, being carried on in the name of "the Governor, Council, and Representatives of the province."²³ At this session several important enactments were made. The past proceedings of the people in relation to the establishment of county divisions, were recognized and confirmed, only, that some alteration of limits was made. The boundary between the counties of Burlington and Gloucester was laid down new, which it was said, was to remain "fixed, and recorded, firm, and inviolable, from henceforth and forever." This "in-

²¹ The committee were Thomas Lane, Robert Hackshaw, James St. John, Daniel Coxe, John Jurin, Edmund Harrison, John Bridges, Mord. Abbott, William Wrightman, and Robert Michel.

Book B of Deeds in the office of the Secretary of State, Trenton, p. 287.

²² Nearly at the same time Hamilton was appointed Governor of East Jersey, his commission to that office being given on the 25th of March, in the same year.

²³ From some references in the proceedings of the Assembly, it would appear that a sitting had been held in May, preceding, but no further record thereof exists.

violable" boundary, however, was wholly removed at the next sitting of the Assembly, by the entire repeal of the act. A new county was also established. Cape May "being a place well situated for trade, and settled by a considerable number of families," was erected into a county, to be called the county of 'Cape May'. Courts for the trial of small causes were to be held in the new division; but higher cases were to be heard in the Sessions, in Salem. At the next meeting of the Legislature, Cape May was more fully admitted to the dignities and privileges of a county, by the institution of county courts within its limits, but the jurisdiction of these courts was limited to the trial of civil actions under the sum of twenty pounds; at a subsequent period, however, (1697,) this restriction was also removed. An enactment was passed for raising money by an assessment upon *persons*, for discharging public debts, and for paying the Governor.²⁴ The sum of two shillings was to be levied upon every person resident in the province, who was sixteen years old and upward. New provisions were made in relation to the sessions of the General Assembly; it was directed that thenceforward, instead of two yearly sessions, one, only, should be held, unless there should be an "imminent occasion" when the Governor and Council might order a meeting. In 1694, further regulations were made for determining the boundaries of the several counties.²⁵ In consequence of the establishment of these

²⁴ It was said that they were "desirous to present our Governor with one hundred pounds."

²⁵ The two distinctions or divisions formerly called the first and second tenths, were laid into one county, name-l, and to be called the county of Burlington, to extend from the River Derwent, formerly called Sunpink, on the north, to the River Crapwell, formerly called Pensawkin, on the south. All persons above the Sunpink were placed under the jurisdiction of Burlington, until the further orders of the Assembly. The two divisions heretofore called the third and fourth tenths were laid into a county to be called the county of Gloucester, to extend from the River Crapwell or Pensawkin, on the north, to the River Berkely, formerly called Oldman's Creek, on the south. The country formerly included within the jurisdiction of Salem Court, was declared a county, to be named the county of Salem, to extend from the River Berkely on the north, to the River Tweed, formerly called Back Creek, on the south. Cape May was to extend from a line across the province formed by the Prince Maurice River on the one side, and the middlemost great river that runs into the Bay of Great Harbor,

divisions, other provisions became necessary for the election of Representatives to the General Assembly. Hitherto they had been elected in the several tenths, henceforward they were to be chosen in the counties. The times and places for holding the county elections were prescribed, and also the number of Representatives to be chosen in each. Burlington was to have twenty, Gloucester twenty, Salem ten, and Cape May five. The electors were to be the freeholders within the respective counties, but no other qualifications were required in the case of the Representatives, except that they should be "good and sufficient men."²⁶ Authority was given by enactment to raise money for county purposes; the levy was to be ordered by the Justices of the county courts, or a quorum of them, with the assistance of the Grand Jury, at their respective Courts of Quarter Sessions. "All the officers of the county, however, as had formerly been the case in the tenths, were to be appointed by the Legislature, including the Justices, Clerk and Recorder, Attorney, Sheriff, and Coroner; and the fees of these several officers were fully prescribed. By an enactment made in 1696, provision was made for the permanent support of the government by assessments upon real and personal property. In carrying out the object, warrants were to be issued by the County Courts to the Constable of each precinct, who should warn and require the inhabitants within their respective precincts, to meet on a certain appointed day, and choose Assessors and Collectors of taxes, and also to render an account of property. The rates of assessment were determined by law. The several Collectors were to pay in the amount received by them, to the Provincial Treasurer; and the whole was required to be paid in current silver money. Out of the amount thus collected, the sum of two hundred pounds was to be paid to the Governor,

on the other side, and then along a line by the ocean, and the Bay of Delaware. The people settled on Egg Harbor, out of the limits above mentioned, were to be included in Gloucester, by which provision the *jurisdiction* of the latter county was extended from the Delaware to the ocean. The territorial extent of the counties in an eastern direction was not laid down.

²⁶ By a subsequent enactment they were required to be "freeholders."

²⁷ In Gloucester, under its independent organization, taxes were levied by the Grand Jury alone, and this power was exercised with a good degree of freedom.

and the remainder to be and continue in the hands of the Treasurer, at the disposal of the Assembly. By a subsequent enactment, the course of procedure above mentioned was changed; the inhabitants in some of the precincts neglecting or refusing to elect the officers, and the officers when chosen, neglecting or refusing to perform the duties assigned to them, the Assessors and Collectors were appointed by the Assembly.

The religious opinions and views prevailing in the province were indicated by an enactment of the same year. "Some persons, out of a principle of conscience, not having freedom to take oaths," it was enacted, that they should not on that account be disabled or incapacitated from holding any office within the province, or be excluded from any right or privilege, he or they signing the declaration of fidelity, and profession of the christian faith.²⁸

A good degree of order and harmony was now established in the province. Governor Hamilton conducted himself in the office committed to him, in such a manner as to conciliate the people; in some respects his appointment proved to be a wise and fortunate measure. It tended however, to involve the province, in some degree, in the difficulties which occurred in the neighboring province. In the history of East Jersey, the removal of Hamilton from office by the proprietors, in 1697, with the reasons that led to that step, were noticed at length. The proprietary authorities in West Jersey appear to have acquiesced, and perhaps directly

* The declaration was as follows:—"I do sincerely promise and solemnly declare, that I will be true and faithful to William, King of England, and the government of this province of West New Jersey, and I do solemnly profess and declare, that I do from my heart abhor, detest and renounce as impious and heretical that damnable doctrine and position that princes ex-communicated, or deprived by the Pope, or any authority of the See of Rome may be deprived or murdered by their subjects or any other whatsoever. And I also declare, that no foreign prince, person, prelate, state or potentate hath, or ought to have any power, jurisdiction, superiority, preeminence or authority, ecclesiastical or spiritual, with this province." The profession of faith was, "I profess faith in God the Father and in Jesus Christ his Eternal Son the true God, and in the Holy Spirit one God blessed for ever more, and do acknowledge the Holy Scriptures of the Old and New Testament to be given by divine inspiration.

participated in that procedure, and hence the office of Governor was vacated at once in both of the provinces.*

Jeremiah Basse, the successor of Hamilton, was appointed by the concurrent action of the proprietary bodies in the eastern and western provinces, and he entered upon office in both, nearly at the same time. But in the latter province, his administration, though by no means popular, was far less disturbed than in the former. No actual or open resistance to his authority was made. The objection made against him in East Jersey on account of the want of the necessary confirmation of his commission by the proprietary body, did not apply in the other province. The lack of *Royal* approbation was not strenuously urged, being apparently regarded, rather as a formal, than as an essential defect, and as no occasion for the active interference of the Deputy in the affairs of the province occurred, there was at least a negative acquiescence in his rule. But the fact that no meeting of the Assembly took place during the period of his continuance in office, may perhaps be considered as evidence that there was but little cordiality and confidence between him and the people. It is also stated that manifestations of want of respect were frequently exhibited on occasions of his presence in the courts: that officers and jurors could scarcely be procured, and that the courts did little more than meet and adjourn.³⁰

At the departure of Governor Basse for England, in consequence of the disturbances which had occurred in East Jersey, Andrew Bowne was left in office as Deputy, but if the authority of this officer was designed to extend, and did extend to the western province, it was so slightly exercised, or so little regarded, that no trace of its operation is known to exist. The re-appointment of Andrew Hamilton in 1699, brought him again into West Jersey, the proprietary or governing body of that province, agreeing and acting in the measure.³¹ The Governor was well received and

* In a joint representation afterwards made by a number of the proprietors of East and West Jersey, the removal of Hamilton is referred to, as the act of the proprietors of both provinces. *Grants and Concessions*, p. 592.

³⁰ Barber and Howe, p. 204.

³¹ The West Jersey Society were the actors in these proceedings.

the Assembly continued to hold regular sittings; no interruption occurred in the transaction of business, or in the appearance of harmony between the different branches of government. The salary of the Governor was raised to three hundred pounds, which was to be presented and given to him "in token of our good will and affection toward him." The "decency and order" of the people of the province were appreciated by Governor Hamilton, and were considered by him as forming a "good example" for the authorities and inhabitants of East Jersey, where the condition of affairs was extremely different. But this state of quietness was not long continued. The want of the approbation of the King to Hamilton's commission, afforded a cause or a pretence for opposition, which in East Jersey arose to such a height as to threaten the subversion of the government. And some of the inhabitants in that province, as has been seen, petitioned the King that he would be pleased to appoint a person who was qualified according to law, to be Governor.

The proprietors, threatened on the one hand by a trial at law conducted under Royal authority, and alarmed on the other, by the disturbances in the province, were meditating a surrender of the government.³³ In West Jersey, if the same difficulties did not exist at the time, owing to the absence of some of the causes which operated in the other province, there was yet but little assurance for the future. There also the right of the proprietors to the government was to be contested by his Majesty, and it might also be brought into question, as it had formerly been, by the people of the province. Hence the holders of authority here were likewise disposed, if satisfactory conditions could be made, to yield up the government. But in the interval exertions were used to remove the existing grounds of complaint. A joint petition from the proprietors of both provinces was presented to the Lords Chief Justices of England. The petitioners set forth that they had been legally entitled to the government of these provinces and in the exercise thereof, had appointed Governors there, and among others had given a commission to Colonel Andrew Hamilton, who had administered the government to general satisfaction;

³³ Note in Whitehead, p. 225.

but as some doubt had arisen whether a native of Scotland could properly serve, according to an act of Parliament, applying to Provincial Governors, they had, to remove all cause or colour of offence, removed the said Hamilton from office, and had appointed one Jeremiah Basse in his place. But as the latter had not such full confirmation of his powers, as was thought necessary, and being informed that the former Governor, Hamilton, was not disqualified on account of his being a native of Scotland, they again appointed him to office. But then, upon applying for a confirmation they had learned that their right to the government was to be controverted, and that the approbation of the King could not be obtained, but that the Lords of trade and plantations were of opinion that a commission might be given, and that the Governor might safely act in the interim; and he had accordingly gone to the province and re-assumed the government. But some turbulent persons impatient of any government, had opposed the Governor's administration because his commission had not been approved according to the letter of the act, and that the public peace was violated and public justice obstructed. The petitioners declared that they were ready to surrender all their rights of government to his Majesty upon such terms and conditions as would secure their properties and civil interests, but besought, that until such forms could be agreed upon, for the preservation of order and quiet in the provinces, Colonel Hamilton might be confirmed in office as Governor. The prayer of the petitioners was not successful, no concession in regard to the Governor was obtained.

It would appear from the above petition that the proprietors in both provinces were fully disposed to surrender the government, provided the terms could be satisfactorily adjusted, and this was the matter to which attention was now particularly turned. In their first proposal it was asked by the proprietary body of East Jersey that their rights to the lands and soil of the province should be secured; that Perth Amboy should be established as a port, not subject to any other, but paying the same or like customs as were payable in New York; to have free liberty to trade with the natives or other people of America, without interruption; and to have the exclusive right of purchasing lands from the Indians. They also asked that the regular administration of justice might

be continued in the province, so that the people might not be taken, or be obliged to attend elsewhere; that the divisions of the province into counties should remain as before, and that the inhabitants should not be deprived of any of their civil and religious privileges and rights. The Lords of trade and plantations expressed a willingness to accede to some of the conditions proposed, but decidedly objected to others.³³ A modification of some of the terms was proposed which might render them less objectionable, but a principal one, that which related to the establishment of ports, was virtually rejected: it was said that his Majesty *might* accede to it with certain "reasonable conditions," but that it would be improper for his Majesty to oblige himself to a compliance therewith.³⁴ This was deemed by the proprietors to be an important point, and in a second communication they stated, that they were surprised at the dubious answer of their Lordships concerning the establishment of a port at Perth Amboy; that they had supposed that the principal objection to the allowance of a port in East Jersey arose from the non-payment of customs there, and the detriment done thereby to New York, which objection it was thought would be removed by the offer to pay the same customs as were payable at New York; and they considered themselves to be equally entitled to his Majesty's favor and protection, and to the enjoyment of privileges in trade as others. They also stated, that the obtaining a port to be continued forever was their main inducement to consent to a surrender of their government; that this was the only thing which could make the province of any value to the proprietors, or give them hopes of re-imbursing their purchase money and other expenses, and that if this privilege could not be allowed, the proprietors could not be accessory to their own ruin by a voluntary surrender; but must endeavour to vindicate their rights in a legal manner. But they mentioned that if the condition in respect to a port should be granted, little difficulty would be made in adjusting the other particulars. It is not easy to perceive what were the reasons of the opposition to this

³³ "The Lords Commissioners of Trade and Plantations," were a board established by King William soon after his accession, for directing the affairs of the colonies.

³⁴ Grants and Concessions, p. 594.

particular demand of the proprietors; upon the conditions proposed, the grant could not have operated to the lessening of his Majesty's revenues. But the interest of New York, which might have been affected by the establishment of a port upon any conditions, in East Jersey, may possibly have still been urged as of superior importance. His Majesty had been willing to favor New York at the expense of the neighboring province, and had given instructions which tended to such a result. A trial too was then pending, conducted as between the authorities of New Jersey and New York, in which the privileges of the former in regard to ports were in issue.³⁵ These privileges were afterwards confirmed, but with little benefit to the gaining party: the decision substantiated the claims of New Jersey under its own government; but it did not delay, indeed it may only have hastened, the movement which was directed by his Majesty's order, against the government itself. This, the proprietors probably perceived, and hence their inclinations respecting a surrender of the government upon suitable terms were not changed by the decision. A new memorial from the proprietors of East and West New Jersey was soon afterward prepared. They now set forth that though they were advised that their rights to ports and their administration of government in their respective provinces was fully asserted in the late trial in the Court of King's Bench, yet they were still prepared and were desirous to surrender the right of government: in hope and confidence that as his Majesty's Royal wisdom had prompted him to resume the proprietary governments into his own hands, his justice and goodness would incline him to grant all reasonable privileges and rights. They proposed and prayed that his Majesty would confirm their lands and quit-rents; the sole power of purchasing lands from the Indians; liberty of trading with the Indians as was enjoyed in other provinces; that the Port of Perth Amboy, in East Jersey, and the ports of Burlington and Cohansie, in West Jersey, might be established forever, so that no ships bound to those places, should be obliged to enter

³⁵ The suit arose out of occurrences which took place when Basse was Governor of East Jersey, and Lord Bellamont of New York, and the suit was nominally between them. The particular cause was the seizure of the vessel by the Governor of New York, which has heretofore been noticed.

elsewhere, and that East and West New Jersey might be erected into one distinct government, and have one General Assembly. They proposed that the General Assembly should consist of thirty-six Representatives, to be chosen, two by the inhabitants, householders of the city or town of Perth Amboy, in East Jersey; two by the inhabitants, householders of the city or town of Burlington, in West Jersey; sixteen by the freeholders of East Jersey, and sixteen by the freeholders of West Jersey; but that no person should be capable of being elected a Representative who should not have one thousand acres of land in his own right within the province for which he was chosen, and no freeholder be capable of electing who should not have one hundred acres of land. They asked that no appeals to the King should lie, in personal actions, in cases of less than two hundred pounds; that all *Protestants* should be exempt from all personal laws relating to religion; and that the proprietors might be allowed to nominate the first Governor.³⁶ Following upon this memorial was a representation from the Lords of trade, to their Excellencies the Lords Justices. In this, a recital was given of the several grants upon which the titles and claims of the proprietors were founded, and also of the difficulties and differences that had occurred in the provinces. Their Lordships doubted whether any sufficient form of government had ever been settled, and that the "pretended right" to govern had been surrendered to his late Majesty King James, by the proprietors of East Jersey,³⁷ in the year 1688. But that since his present Majesty's accession, the proprietors of both East and West Jersey had continued to challenge the same right as before, and that several Governors had been appointed under their authority. But that the people of East Jersey in a late petition to his Majesty, had complained of several grievances, and of the neglect and mismanagement of the proprietors; and that it appeared from divers representations, that the provinces were in a state of confusion and anarchy. That the proprietors themselves, or a number of them, sensible of the necessity of his Majesty's authority, had presented memorials, in which, though the memo-

³⁶ This memorial was dated August 12th, 1701. *Grants and Concessions*, p. 601.

³⁷ The surrender in *West Jersey* was not mentioned.

ialists "seemed" to assert a title to government, yet declared themselves willing to surrender the same to his Majesty upon such terms and conditions as would secure their civil interests and their property, and also that the proprietors of East Jersey residing in the province, had sent over an agent and attorney with authority to offer an *absolute and unconditional surrender* so far as they were capable of making it.²⁸ That it was the desire of several of the proprietors, that the Governor in office, Colonel Hamilton, might be confirmed therein, until further measures could be taken, but that others opposed his confirmation. Their Lordships then stated, that they were not satisfied that the grants that had been made by the Duke of York to the proprietors, being without any direct and immediate authority from the Crown, were, or could be of any validity to convey a right of government, that being (as they were informed) inalienable and not to be assigned to any other, much less divided and subdivided; and that for this reason they had advised his Majesty that a trial should be had in Westminster Hall, in order to test the right in question. But as no determination had yet been made, and as the provinces had fallen into such disorder and confusion that the public peace, and the administration of justice were interrupted and violated, they were of opinion that it was very expedient for the preservation of those territories to the Crown, and for securing the private interests of the persons concerned, that his Majesty should constitute a Governor by his immediate commission, and that a regular constitution of government should be established. They also recommended that draughts of such commission and constitution might be prepared, that they might be shown to the proprietors, in order to their acquiescence, and to the surrender of their "pretended right of government" in such manner as might be effectual in law.²⁹ As a mere historical summary, this memorial from their Lordships may not be open to serious objection. But in other respects, the view it presented was far from correct. The allegations in regard to the insufficiency of the grants from the Duke of York were wholly unfounded. The King of England had con-

²⁸ No mention is elsewhere made of such a proposal.

²⁹ Grants and Concessions, p. 403.

veyed the country to the Duke and in a manner that was warranted by the customs of the realm; he had conferred upon him proprietary rights and authority, in accordance with established usage, he made the property and the *power* he granted, transferable to "heirs, deputies, agents, commissioners and assigns." To allege that the right of government held under such a grant, was "inalienable from the person to whom it is given," was little short of maintaining a direct contradiction. If there was any defect, it must have been in the right of the King to make such a conveyance; but, as has just been remarked, he was warranted in the act by established custom. It is probable, however, that the allegation above mentioned was no more than a mere pretence. The privileges held and claimed by the proprietors, were thought to be detrimental to his Majesty's interests, especially the privilege of ports; and to enable his Majesty to resume authority, either by forcing the proprietors to make some concessions, or otherwise, to deprive them of the government entirely, may be supposed to have been the real motive that prompted the proceeding. The memorial, too was somewhat disingenuous in the statement, that no sufficient form of government had ever been settled in the provinces, and also in relation to the circumstances of the former surrender of government, and of those which caused the present proposal to surrender. In regard to the present proposal, the measure which the Lords Commissioners had recommended, to "test" the proprietary rights, was no doubt productive, in part, of the expected effect. It evidently put the government in jeopardy, for though the apparent ground of the proceeding seemed wholly untenable, yet, in the disposition that then prevailed the issue of a trial was doubtful; and a surrender upon determined conditions, was probably considered a more prudent course, than to incur the hazard of a decision by law. The confusion and disorder prevailing in East Jersey was also a principal motive to the measure. If the government could be saved to the proprietors in a decision by law, it might still be taken by violence and force. Many of the people were resolved to resist any rule which should call in question their titles to land, and demand the payment of rents; and numbers, who had hitherto been quiet, making an advantage of the confusion of the times, were taking

p lands upon the Indian right, and thus arraying themselves in opposition to government. Difficulties too, had occurred in the administration of government, which, under the circumstances of the time, the proprietors were unable to remove, and thus new causes or occasions of dissension had arisen.

In West Jersey the circumstances were so far similar as to lead to a general concurrence of action. The claim to government in that province was equally involved in the pending trial. The actual internal condition of the province was far more favorable; it was entirely free from a source of dissension which had proved most fruitful in the other; there was no dispute concerning the titles to land, all the lands had been purchased from the natives by the proprietors, and were conveyed by them to the people, by regular grants. But serious difficulty had occurred from a different source, for some time the government had stood upon disputed ground; the people were not now in active opposition, there was even an appearance of satisfaction; yet, as the nature of the relations between the people and the claimants and possessors of power continued unchanged, there was nothing to give an assurance of continued tranquility. An additional reason operating in both of the provinces, was the state of the proprietary bodies themselves; they were divided in situation, some of the members remaining in England, and others in the provinces, and this, together with the decrease in their numbers, and the consequent division of interests and of views, rendered it scarcely possible to maintain the necessary union and concert in action.

The recommendations contained in the memorial of the Lords of trade were acceded to, and carried into practice. A plan of government contained in a commission and instructions for a Governor, were prepared, by order of their Excellencies the Lords Justices, and were offered to the consideration of the proprietors of the provinces, and received their unanimous approval; permission was also given to them, agreeably to their request, to name a person to be appointed by the King, as Governor; but they were unable to agree in the recommendation of any individual. The plan of government was also submitted to the King with a humble request from the Lords of trade, that his Majesty would be pleased to confirm it, and to appoint some

person as Governor who was wholly unconcerned in the factions that had divided and distracted the provinces.⁴⁰ The arrangements for the contemplated change were not fully completed when the death of William, the English King, which occurred in March, 1701-2, suspended the proceedings. But soon afterwards upon the accession of Queen Anne, the business was resumed and was quickly perfected. The act of surrender was designated as "The Surrender from the Proprietors of East and West New Jersey, of their pretended right of Government, to her Majesty." It was dated April 15th, 1702. In this instrument the proprietors of the said provinces surrendered and yielded up "and by these presents do surrender and yield up to our Sovereign Lady Anne, by the Grace of God, Queen of England, Scotland and Ireland, defender of the faith, all the powers, authorities and privileges of, or concerning the provinces aforesaid." The act was signed by twenty-two persons for the eastern province and by thirty-two for the western. Two days afterwards the government was formally accepted by the Queen, at the Court of St. James', in the presence of the principal persons of the court, some of the proprietors themselves presenting the instrument. Her Majesty then gave orders that the deed of surrender should be enrolled in her Majesty's High Court of Chancery.

⁴⁰ Smith's New Jersey, p. 261.

CHAPTER XV

NEW CONSTITUTION OF GOVERNMENT.—LORD CORNBURY'S ADMINISTRATION.

"THE surrender of the Jersies," said William Penn, "is an ugly preface." By this expression he probably meant to convey the idea that the surrender was of evil augury, in regard to the interests and the permanence of proprietary governments. But it was not the proprietary or governing interest alone, that was concerned in the change; the condition of the people at large was materially affected thereby. It has been seen that the projected system of government received the approval of the proprietary bodies, and some of its principal provisions appear to have been adopted upon the suggestions they made. Whether the authority of these bodies was such as to render them competent to dispose anew of the rights they had heretofore granted; whether in the act of surrender the privileges formerly enjoyed by the people, were placed at the foot of the throne, to be re-granted or withheld according to the royal discretion and will, are questions which might admit of protracted debate. But whether as a measure of right, or of mere authority, the new Constitution of government was at once established. It was promulgated on the 16th of November, 1702, being contained in a commission and instructions given to Edward Hyde, Lord Cornbury, to whom its administration was entrusted.¹ Lord Cornbury was appointed as Governor both of New York and New Jersey. His commission in the latter gave him the style of "Captain General and Governor-in-Chief in and over the province of Nova Cæsarea, or New Jersey, in America."

¹ Lord Cornbury had been proposed as Governor before the death of King William, but received his appointment from Queen Anne, to whom he was related; he was the grandson of the Earl of Clarendon.

By the new plan, East and West New Jersey were fully united and incorporated together as one province, and made subject to one government. The government of the province of New Jersey was to be vested in a Governor, Council and General Assembly. The Governor was to hold office at the pleasure of the Crown. The Council were appointed by the same authority, but the members of Council might be suspended for just cause, by the Governor, who might also nominate to office, and appoint members to serve in cases of death or absence, subject to royal confirmation; but the number could not be augmented or lessened by him. The General Assembly was to consist (according to additional instructions afterwards given by the Queen.) of twenty-four Representatives, to be chosen, two by the inhabitants householders of the city or town of Perth Amboy, in East Jersey; two by the freeholders of each of the five counties of the said division of East New Jersey; two by the inhabitants, freeholders, for the city or town of Burlington, in West New Jersey; two by the inhabitants, householders of the town of Salem, in the said division, and two by the freeholders of each of the four counties in the said division of West New Jersey. No person could be elected a Representative who had not a freehold estate in his own right, of one thousand acres of land, within the division for which he should be chosen, or personal estate to the value of five hundred pounds sterling; nor could any person vote in an election for Representatives who should not be possessed of a freehold estate in his own right, of one hundred acres of land within the county in which he should vote, or personal estate to the value of fifty pounds sterling. The Assembly was to be called, and to sit, alternately at Perth Amboy, in East New Jersey, and at Burlington, in West New Jersey.² The number of the members of the General Assembly, or the manner of choosing them was not to be changed except by an act of the Assembly, and confirmed by Royal approbation. The Representatives chosen were to take the oaths required by act of Parliament, without which they were not to be capable of sitting. The Assembly was to be convened

² In cases of "extraordinary necessity," the Governor, with the advice of his Council, might appoint the meetings differently.

by the authority and order of the Governor, with the advice of his Council, from time to time as need should require, and the Governor might adjourn, prorogue or dissolve it according to his discretion. It was prescribed that in enacting laws, the style used should be, "by the Governor, Council and Assembly," and full power was given to enact all laws, statutes and ordinances, for the peace, welfare and good government of the province; such laws and statutes not being repugnant to, but as near as may be agreeable to the laws and statutes of the kingdom of England.³

The Governor was directed to propose to the General Assembly and to use his "utmost endeavours" with them, that an act should be passed for raising and settling a public revenue, for defraying the charges of government, including particularly a competent salary for himself as Captain General and Governor-in-Chief of the province. He was also instructed, in order to the quieting the minds of the people, and for settling the properties and possession of all persons, either proprietors under the original grant of the province, or purchasers from them, to propose the passing of an act or acts, whereby the rights and property of the proprietors of the soil might be confirmed to them, according to their respective rights and titles; together with all quit-rents that have been reserved or that were, or should become due. Care was to be taken that no other persons except the general proprietors or their agents should be permitted to purchase any land whatsoever from the Indians within the limits of their grants, and the Governor was to permit the Surveyors and other persons appointed by the general proprietors to execute their respective trusts, and if necessary, to give them assistance, such persons taking proper oaths for the due fulfilment of their offices, and also the oaths appointed by acts of Parliament.

In settling a revenue, it was to be proposed to the Assembly that such customs and duties should be laid upon commodities imported and exported, as were laid upon similar commodities in

³ It was also provided that all laws of what nature or duration soever, should, within three months or sooner after the making thereof, be transmitted for approbation, and all such as were not approved, and the approval signified under the Royal sign, manual and signet, or by order of the Privy Council, should become utterly void, and no effect.

New York.⁴ The Governor was required not to permit any clause to be inserted in any law for levying money, or the value of money, whereby the same should not be made liable to be accounted for in England, to her Majesty's High Treasurer, or the Commissioners of the Treasury; nor to suffer any public money to be issued or disposed of, otherwise than by warrant under his hand, by and with the consent of the Council.

To the end, that nothing should be done "to the prejudice of our heirs and successors," it was ordained, that the Governor should enjoy a negative power in making and passing all laws, statutes and ordinances. He was also empowered, with the advice and consent of the Council, to erect, constitute and establish such and so many courts of judicature and public justice, as he and they might think fit and necessary, and to determine the authorities, fees and privileges belonging to them; the proceedings in these particulars being subject to her Majesty's approval. The Governor was also authorized to appoint Judges, Justices of the Peace, and other officers for the administration of justice, and for putting the laws in execution. He might pardon all offences against the laws, (except in cases of treason or wilful murder, when reprieves only could be granted,) and remit all forfeitures and fines. He was empowered to provide for the defence of the province, to execute martial law in cases of invasion or insurrection, and to do every other thing that might of right appertain to the office of Captain General and Governor-in-Chief. In case of the death or absence of the Governor, his duties were to be performed by a Lieutenant Governor, commissioned by the Crown, and if no such officer should be in the province, the oldest Councillor, whose name was first placed upon the Governor's instructions, should take upon him the administration of government.

Certain general provisions in relation to the privileges of the people were also contained in the instructions. No man's life, member, freehold or goods, should be taken away, otherwise than

⁴ It was said that "the trade and welfare of the province of New York would be greatly prejudiced, if not entirely ruined, by allowing to the inhabitants of New Jersey any exemption from those charges which the people of New York were liable to."

by established and known laws, and liberty of conscience was to be allowed to all persons, (except Papists,) who should conduct themselves in a peaceable and quiet manner without giving offence or scandal to the government. Those persons in the province who made a religious scruple of swearing, were to be relieved, by allowing them to take a solemn affirmation instead of an oath. Due encouragement was to be given to merchants and other traders, and especially the Royal African Company of England; and it was recommended to the company that the province should be constantly supplied with "merchantable Negroes," at moderate rates. Laws should be passed to discourage inhuman severity against Indians and Negroes, and the best means were to be used for their conversion to the Christian religion. The Governor was to take care that God Almighty should be devoutly and duly served throughout his government, to which end, a special form of service, with the doctrine and discipline of the Church of England, was to be encouraged and maintained.

The bearing of the new government upon the condition of the parties concerned, may be readily perceived. The former proprietary bodies had lost a claim to authority which they had scarcely been able, if greatly desirous, to retain and enforce; but they were now to be secured under royal assurance and direction, in the enjoyment of property. The people generally gained nothing whatever, but were losers in many particulars. The government was far less favorable to popular interests and rights than those which had previously existed. The Representative body in regard to their meetings and sittings were made wholly dependent upon the will of the Governor. The establishment of courts and the determination of their respective powers, with the salaries and fees of the officers were to be regulated by the Governor and Council; the people, or their Representatives, were allowed scarcely any part or power in the institution and control of the judiciary department of government. The public revenues were to be raised and disposed of, under strict accountability to the Governor, and the authorities in England; the independent action of the popular Representatives in matters of revenue, extended little further than to fix and determine the amount of grants. The complete religious freedom formerly enjoyed, was reduced to an

imperfect toleration. Papists were wholly excepted from the grant of liberty of conscience, and the influence and patronage of government was to be given in favor of a particular church.⁵

The institution of slavery, which though formerly existing, had not been fostered, was now urged upon the province by royal recommendation. As a still more decisive mark of the character and temper of the government, a direction was given, that "forasmuch as great inconveniences may arise by the liberty of printing in our said province, you are to provide by all necessary orders, that no person keep any press for printing, nor that any book, pamphlet, or other matters whatsoever be printed without your especial leave and license first obtained."

Lord Cornbury arrived in New Jersey in August, 1703. The Council had already been appointed.⁶ His instructions required that he should convene his Council and "with all due solemnity" cause the commission he had received to be read and published at their meeting, and also that proclamation thereof should be made throughout the whole of the province. This being done, an order was issued for the choice of members of the General Assembly, and the Representatives elected convened at Perth Amboy on the 10th of November, 1703. Nearly the whole number allowed, had been chosen, and were in attendance.⁷ Thomas Gardiner, a Representative from the town of Burlington, was appointed Speaker.

The change that had taken place in the character of government was indicated by the manner of proceeding at the opening of the

⁵ The Churches already built were to be well kept, and others erected; a competent maintenance to be assigned to the minister, a convenient house built for his accommodation, at the common charge, and a sufficient proportion of land be assigned for his use. The Governor was empowered to prefer any minister to any ecclesiastical benefice in the province, provided however, that a certificate should first be had from the Right Reverend Father in God, the Lord Bishop of London, of his being conformable to the Church of England.

⁶ The Council had been appointed by the Queen. They were Edward Humble, Lewis Morris, Andrew Bowne, Samuel Jennings, Thomas Revell, Francis Davenport, William Pinborne, Samuel Leonard, George Deacon, Samuel Walker, Daniel Leeds, William Sanford, and Robert Quarry.

⁷ Twenty-three members were present. The names are given in Smith's New Jersey, p. 276.

session; the forms of address expressive of deference to the representative of royalty, were adopted by the Assembly in addressing the Governor. They asked that the members, with their servants, might be free from arrest or molestation during the continuance of the session; that they might have free access to his Excellency's person, as occasion might require; that they might have liberty of speech, and a favorable construction of all debates that might arise; and that if any misunderstanding should occur between the Council and the House, that a committee of the Council might be appointed to confer with a committee of the House for adjusting all differences. These requests were granted by his Excellency, excepting the last, which was denied as being "an innovation."

The Governor proceeded to explain his situation and aims, in a speech to the Council and Assembly. He stated that her most Gracious Majesty had been pleased to honor him with the trust of government, and had commanded him to assure them of her protection; he set forth, that under her auspicious reign they might enjoy all the liberty, happiness, and satisfaction that good subjects could wish for, and he did not question but that they would do all that could be required of faithful subjects. He recommended that they should endeavour "heartily and seriously" to reconcile the unhappy differences that had heretofore existed; stated that they were now met for the purpose of passing such laws as might conduce to the quiet and welfare of the province; and that he was commanded to recommend to them to raise a revenue for the support of the government, and to settle the right and property of the general proprietors to the soil of the province, according to their respective titles, together with their quit-rents and other privileges.

The reply of the Representatives was marked by a degree of warmth and courtesy, that would almost seem to have exceeded the limits of prudence. They returned "heartly thanks" for his Excellency's kind expressions, and said they were assured that the proprietors, by their surrender of the government, had put the people and province in much better circumstances than they were; the former rulers not being able to give protection "from the villainies of wicked men," and they said, that having an entire de-

pendence upon her Majesty, and relying upon her protection their best endeavours should not be wanting to accomplish those things that would give her content, and be to her honor.

The change of government that had occurred might have seemed to be the cause of satisfaction in view of the disorders that had formerly prevailed in the province, but the cost of the restoration of order was yet to be determined. If quiet was to be secured by the exercise of arbitrary power, there would be but slight occasion for rejoicing on account of the change. That such, to a great extent, was likely to be the case, under the administration of Cornbury, was not long in appearing.

The recommendations of the Governor were acceded to by the House by the preparation of bills upon the subjects he had mentioned, and they were directly presented to him for approval; but only one received his assent.* The others were not so framed as to correspond with his views. On the 13th of December, the House was prorogued; his Excellency expressed his regret that the bills prepared could not have been despatched, but that the matters contained in them were "of so great moment, the difficulties so many, and the time so short that it was impossible to finish." The authority which the Governor was disposed to exert in directing and controlling the legislative body, was thus exhibited at the beginning of his course.

The next sitting of the Assembly was held at Burlington, beginning on the 7th of September, 1704. The Governor again presented to the body the particulars formerly brought to their notice, urging especially the enactment of laws for determining the rights of the general proprietors, and for raising a fund for the support of the government. Some occurrences had also taken place which afforded an occasion to represent, that a necessity existed for raising a military force. All these were matters with which the Governor had been charged in his instructions, and his bringing them before the Assembly was no more than an act of official duty. But they were also matters of difficulty. From the very beginning of the province the proprietary rights and

* This was an act prohibiting the purchase of land from the Indians by any except the proprietaries.

claims had been a subject of dissension, and in East Jersey these claims had been a principal cause of disturbance and of the opposition of the people to the proprietary government. Yet now it was proposed that they should be confirmed by the new authorities. The claims were just, and it may be that the members of the Assembly themselves were not averse to such a confirmation, but whether so or not, they could not but feel a degree of embarrassment on account of the state of popular opinion and feeling. The support of government was a subject of scarcely less difficulty. The weight of government in a pecuniary sense, had hitherto been light; the burden of heavy salaries was unknown, and such an amount as would be answerable to the Governor's views, might prove to be productive of much discontent. In regard to the provision for a military force, a degree of caution was also required. A strong feeling averse to all such measures existed in a portion of the province, and this feeling would not be likely to yield, except to a very limited extent, to the reasons for the present demand.⁹ Hence the action of the Assembly upon the business before them was somewhat hesitating and tardy. They finally resolved upon raising the sum of thirteen hundred pounds per annum for the support of government, to continue for the term of three years. But the Governor expected and required a far larger sum, and manifested his dissatisfaction in a manner extremely imprudent and hasty.¹⁰ He abruptly dissolved the Assembly, and issued a direction for the choice of a new House, to meet on the 13th of November following. By these steps he not only precluded action upon the other matters before the Assembly, but excited feelings little favorable to future harmony between the different branches of government.¹¹ His subsequent

⁹ A French privateer had appeared on the coast and had committed some depredations. The Governor required that a watch house should be erected, and a general militia law be passed. *Smith's New Jersey*, p. 282.

¹⁰ Gordon states that the Governor required the sum of two thousand pounds per annum for twenty years.

¹¹ It will subsequently appear that beside the displeasure of the Governor on the account here mentioned, an additional reason was supposed to exist for his hasty dismissal of the House. It was suspected, or was alleged, that he was not really desirous himself, that the House should proceed in the matter relating to the proprietary rights.

proceedings were not more wise. With a view to procure : House more liberal or compliant in temper, the election was "industriously managed." But the "management" not being successful in securing a majority of members supposed to be favorable to the Governor's views, another expedient was resorted to. By the advise of his Council, a resolution was taken that some of the members lately elected should not be admitted to their seats, upon the pretence that they were not possessed of the amount of property required in the constitution of government. Accordingly when the members presented themselves, the oaths were refused to three individuals, Thomas Gardiner, Thomas Lambert and Joshua Wright, members elect from the western portion of the province. They were therefore prevented from taking their seats.¹ It is somewhat difficult to bring the mind to the belief that so unworthy a course of procedure, could be devised, and carried on to completion. But the fact of the rejection of the members is quite indisputable, and that it was done to secure a subservient House, is the judgment that history has given. The immediate object proposed was attained. By the rejection of the three individuals, a majority was secured prepared to second the demands of the Governor, as well as to gratify his weak ambition. He was complimented by the House, whose privileges he had outraged, for his mode of conducting the government; it was carried on, as they said, "with great diligence and exquisite management to the admiration of his friends, and the envy of his enemies." The measures of such an Assembly might be expected to be compliant. The sum of two thousand pounds per annum was granted for two years, for the support of government. An act establishing a militia was agreed to, with provisions so rigid, as afterwards gave rise to well founded objection and opposition; an act of amnesty for

¹ Members when elected were not allowed to take their seats until the oaths had been administered. In this particular the Governor was warranted in his acts by his instructions, so also he was in regard to the property qualifications of the members. But the cases in question were prejudged. The Governor acted without any examination, upon the mere information or advice of his Council, or some of them. Still more, there was nothing in the Governor's instructions giving to *him* the power to make an examination and decision in such cases.

all offences committed during the disturbances that had formerly occurred in the province, was also passed. Some other enactments were made which, without a knowledge of the particular circumstances and movements of the time, would seem little consistent with the general course of the Assembly, or with the views of the Governor. A bill was prepared and passed, removing the restrictions in regard to the qualifications of electors and the elected, so far as to admit *all freeholders*, and also declaring that the Representatives met in General Assembly, were, and should be the judges of the qualifications of their own members. This enactment was probably partly designed as a means of reducing the proprietary interest and influence, as well as to define the rights of the Representatives.¹² In accordance with their declaration, the House proceeded, after some delay, to an inquiry in reference to the cases of the excluded members, and decided that they were properly qualified, and made a request to the Governor that they might be sworn, a request however, which was not complied with until the next meeting of the Assembly, when there was nothing to be gained by a longer exclusion. The course of the Governor in the several proceedings just noticed, excited much dissatisfaction. The feeling of discontent that arose was not confined to the parties immediately concerned: it extended in a short time to the proprietary bodies, by whose instrumentality in part, the government had been introduced and established. Their own advantage and credit, as well as a degree of sensibility to the interests of the colonists, made them observant of the course of affairs; and the proprietors of the western division addressed a memorial respecting the transactions that have been mentioned, to the Lords Commissioners of trade and plantations. They acknowledged that the government had been instituted in accordance with the proposals

¹² An analysis of the proceedings of the time would lead to the conclusion, that there was a balancing of interests between the Assembly and the Governor. The latter had been anxious to obtain a House that would give an increase of revenue, and in this he was successful. But it would seem that the prevailing interests in the House was opposed to the ancient proprietary claims, which he Governor had been instructed to protect, but he yielded in one particular, in order to secure a gain in another.

Smith's New Jersey, p. 332.

previously made, but they stated, that the administration thereof had differed much from their expectations. That they had relied upon the grant of a free Assembly, as the chief security of their estates in the province, but that this part of the constitution had been virtually destroyed. That the first Assembly had been dissolved because they declined to grant the amount required by the Governor, and that many artifices had been used to procure another more to his humour, and in particular, that three of the members returned, had been objected to, and prevented from entering the House, upon groundless pretences. This, the memorialist conceived was an invasion of the rights of the Assembly, and if tolerated, would place the whole government in the hands of the Governor. That by this procedure a majority was given in the House who gratified the Governor in granting a revenue, but had made an enactment placing the right of choosing and being chosen to the Assembly in all freeholders, which act the Governor had no authority or color from his instructions, to pass. Such an act they regarded as injurious to them, as it would lead to the election of Representatives who were unfavorable to their rights and interests. That contrary to the instructions given him, the Governor had also assented to an act for taxing unprofitable lands, on account of which many persons who had agreed to purchase had renounced their contract, and that the Governor had also assumed the power of granting fees for patenting lands. These acts they said, were so contrary to the terms of the surrender, and to the assurances given at the time, and to the terms of the Governor's instructions, that they thought it not improper to protest, and they did protest, against the proceedings of the last Assembly, the country not being duly represented therein, and they asked the interposition of her Majesty, that the acts passed by the Assembly should not be confirmed.

At the meetings of the Assembly in 1705 and 1706 nothing of importance was transacted.

During this period the Council of Proprietors of the western division of the province (whose constitution has heretofore been noticed) continued to hold their meetings, and to transact business in the same manner as before the surrender of government. Governor Cornbury conceived that the action of this body inter-

ferred with his authority or interests. Hence, upon their meeting in 1706, various inquiries were directed to them concerning their proceedings, which not being answered in a manner to satisfy his Excellency, he summoned them to meet him at a time prescribed. At this meeting he demanded an explanation of their powers, and objects. In answer to his demand they prepared a statement, setting forth the constitution and establishment of the body; that they were entrusted with the management of all affairs relating to the landed interests of the proprietors; that they purchased land from the natives, ordered surveys, granted warrants, and inspected the rights of the several claimants. The Governor was not yet satisfied, and prohibited the Council from a further exercise of their powers in granting lands.

At the expiration of the time for which the revenue for the support of government had been granted, it became necessary that an Assembly should be called; an election was accordingly ordered, and the Representatives were directed to convene on the 7th of April, 1707.

The occurrences which had now taken place were sufficient to give a clear manifestation of the state of affairs in the province. It was easy to perceive the nature of the "protection" which was to be experienced under the new government, it was sufficiently apparent that the liberty which had formerly been enjoyed by the people, and which by some had been abused, was now to be greatly restricted. But the temper of the colonists did not dispose them to easy acquiescence, and among the members in the new Assembly were individuals who were true Representatives of the people, not only in a political capacity, but also in regard to their feelings and their character. They were perfectly acquainted with the interests of their constituents, and strong, both in ability and in resolution, to maintain them. Among these persons, Samuel Jennings, from the western division, and Lewis Morris from the eastern, were the most influential and conspicuous.¹⁴ Jennings was chosen Speaker of the House. Shortly after the reception of the Governor's address, the House resolved itself into

¹⁴ Jennings and Morris had been members of the Council, but had been suspended by the Governor on account of their opposition to his measures.

a general committee for the consideration of grievances. They continued their sittings from day to day, and finally agreed upon a petition to the Queen, and a remonstrance to the Governor. In the latter they expressed dissatisfaction on account of his Excellency's continued absence from the province, by which a full and timely acquaintance with many important affairs was prevented. They also complained of several delinquencies in the administration of justice; that notorious offenders had been suffered to go at large, and the sentences against them to remain unexecuted, and that the ends of justice and law had thus been frustrated. They set forth that fees had been demanded of persons before any bills had been found against them, and who were therefore to be reckoned innocent of any offence, and represented that if fees could be exacted from such persons, no one could be secure against the designs of malicious and vindictive men. They also stated that the establishment of fees by any other power than the Governor, Council and Assembly, was considered a great grievance, repugnant to the rights that all English subjects were entitled to, and contrary to the Queen's instructions, which instructions forbade that any man's life, member, freehold or property should be taken otherwise than by established and known laws, and they asked that the assent of the Governor might be given to an act for determining fees.¹⁵ But they represented, that there were other grievances of an higher nature, and attended with worse consequences, and that it would not be just to the Governor, themselves, or the country, to conceal them. They stated that they expected when the government was surrendered to the Queen, that they should experience "the benign influences of her mild government," and that they should be protected in the full enjoyment of their liberties and properties, but that it was their misfortune to find that the event had not answered to their expectations. They alleged that the prohibition of the Governor preventing the Council of Proprietors from issuing warrants for taking up lands, was an infringement of their rights. That when the proprietors sur-

¹⁵ The Governor and Council were authorized by the instructions to regulate fees, but the Assembly insisted that the Governor could only regulate fees already established, so as to see that no exaction was practised.

rendered the government, they did not part with the soil, or the right to manage their interests therein, as they should think fit, and that if any persons were aggrieved by the proceedings, the laws would give them redress. But a still greater encroachment upon their liberties, they said, was the refusal of the Governor to swear, or attest three members of the late Assembly, upon the groundless suggestion of two members of the Council, by which means the members were prevented from taking their seats in the House.⁶ This measure, they said, was a violation of the rights of the people, being a virtual denial of their freedom in the choice of Representatives, and was also a breach of the privileges of the Assembly, that body being the proper authority to determine in such cases. The remonstrants declared that they were "sensibly touched" with this procedure, well knowing the consequences that must arise from a Governor's refusing to swear such members of the Assembly as he might think fit. They also stated that it was well known that sums of money had been raised to procure the dissolution of the first Assembly for the purpose of precluding enactments to secure the quit-rents, which sums, it was said, there was great reason to believe, had been given to the Governor to induce, and which did induce him to dissolve the Assembly, and to procure the rejection of some of the members of the next. Great uneasiness was expressed on account of measures so injurious to the liberties and properties of the people. "Liberty" said the remonstrants, "is too valuable a thing to be easily parted with, and when such mean inducements procure such endeavours to tear it from us, we must say, that they have neither heads, hearts, or souls, that are not moved by the miseries of their country, and are not forward with their utmost power lawfully to redress them." They reminded the Governor in conclusion, that no artifice was necessary to engage the affections of a people, that it was only necessary to leave them in the unmolested enjoyment of what belongs to them of a right; and a wise man that despises not his own happiness, will earnestly labour to regain their love.

This free and spirited remonstrance which was read to the Governor by the Speaker Jennings, was rendered still more im-

⁶ The two members of Council were Thomas Hovel and Daniel Leeds.

pressive by the manner of delivery. The Governor manifested much irritation, and at different points interrupted the Speaker with much abruptness, but the calm Jenings only repeated the passages with a greater degree of emphasis.

The Representatives were directed to attend the Governor at a future day, to receive his reply. His answer which was made at the appointed time, was wanting in dignity, as well as in force; it abounded in ungracious reflections upon the Assembly, and still more severe and entirely gratuitous reflections upon the Quakers. But, a full and circumstantial notice was taken of the several particulars presented in the remonstrance. The Governor stated in answer to the complaint concerning his absence, that he had always been in the province twice in every year, and that the Lieutenant Governor resided constantly there.¹⁷ That the power of pardoning and reprieving criminals after condemnation, had been entrusted to him by her Majesty, and that he was accountable to none but her, for its exercise, and that in the settlement of the fees of officers, he was also authorized by the instructions that had been given him. In relation to the prohibition upon the action of the proprietors, he said, that according to the directions of her Majesty, he was to admit all such agents as the general proprietors should appoint, such agents qualifying themselves by taking the oaths prescribed by law, but not otherwise; and that no persons under the name of Council of Proprietors had ever tendered themselves to take the oaths, and consequently they were not qualified to act as agents, and besides, that those individuals who call themselves a Council of Proprietors, were pretending to act by a power derived from persons who have no authority to grant; and therefore he was obliged to interfere in order to hinder an illegal course of action. In reference to the rejection of the members of the Assembly, the Governor stated, that according to the constitution of government, a certain property qualification was required of every member, and that he was informed by some of his Council that the persons in question were not thus qualified, and that he did no more than his duty in rejecting them; but he further stated that he had afterwards recommended to the Assem-

¹⁷ Colonel Ingoldshy was Lieutenant Governor under Cornbury.

bly to inquire into the case, and that they had, after some delay, reported in favor of the members, but *had not furnished him* at the time, with the evidence upon which their conclusion had been founded, but this being afterwards done, at his order, he had admitted the members to their seats. The principal question as to the right of the Governor to determine and act in the case, was passed over without notice. To the graver charge of corruption, the Governor gave at the outset, a direct denial; whether any considerable sums of money had been raised, or not, which he did pretend to determine, he declared, that no such sums had come into his hands, or had ever been offered him; that he had dissolved the first Assembly because it was evident that they never intended to do any thing for the support of the Queen's government, or for the good of the country, and that as to getting rid of the quit-rents, the very mention of such an attempt on his part, was such an absurdity "that no one but Jennings or Morris would have been guilty of," it being a thing well known that at the beginning of each session he had recommended that laws should be passed for settling the rights of the proprietors.¹⁸ In return, the Governor accused the Assembly of several unlawful and oppressive acts, and reproached them with neglecting the proper business of the province in order to engage "in hawking after imaginary grievances." The Assembly did not immediately enter upon a notice of the Governor's reply; their attention was directed to an examination concerning the manner in which the revenues of the province had been kept and expended, and great deficiencies, if not actual abuses, were detected.

The searching and critical spirit that was exhibited, gave no promise of future forbearance and quiet, and the Governor resolved upon a dismissal of the House, which was accordingly adjourned to the ensuing September.¹⁹ But directly upon the meeting of the House, the consideration of the matters formerly

¹⁸ It is certainly true that the Governor had made such recommendations, but it is yet positively asserted, that there was a kind of collusion between him and his opponents of the proprietary claims, and that his influence was used in opposition to his own recommendations and professions.

¹⁹ By the intervention of the Governor the meeting was further deferred to October.

before them was resumed, and a reply to the Governor's address was resolved upon. The Assembly also determined that no money should be granted until redress was given for the grievances of which they complained, in which case they were willing to grant a sufficient amount. The reply of the Assembly was marked by much ability and by some severity. They declared that they should not answer the trust that had been reposed in them without an endeavour to remove the hardships under which they laboured. That they had no occasion to search for "imaginary grievances," as real ones abounded. These grievances they again set forth and in a manner more ample and full than before, and they reminded his Excellency, that it was the General Assembly of the province that complained, and not the Quakers, with whom (as such) they had nothing to do, but who would probably be able to vindicate themselves from the aspersions that were thrown upon their persons and profession. They repeated, that their expectations of full protection to their liberties under the government of the Queen, had not been answered, and that the reasons offered by the Governor to justify his conduct and course were insufficient, or unfounded. That they could not but consider his absence from the province for the greater part of the year, as a disadvantage, especially as the seal of the province was kept by him, and as the Lieutenant Governor, either under orders, or from his own disinclination to serve, entirely refused official employments. That the Governor had no authority to *pardon* wilful murderers (as the persons before referred to were) though he might relieve them, but a relieve could not be construed as warranting a liberation, or such a degree of liberty as would favor an escape. That the Governor's course in reference to the Council of Proprietors was a misuse of his powers. That his instructions indeed required, that the persons or agents employed by the proprietors for surveying and recording grants of lands and collecting quit-rents, should take the oaths prescribed, but that the Council of Proprietors were not such agents as the instructions related to; the Council stood in the character of attorneys or representatives of private men, for the management of their properties, and were in no wise affected by the regulations in question; if these regula-

tions applied to the Council, no person could appoint an attorney but with the Governor's consent and approbation. The only persons affected by the terms of the instructions in relation to taking the oaths, were those who had been specially appointed for surveying, and recording the surveys of land, and receiving the quit-rents; but these persons had never been required to take the oaths, and the Surveyor for the western division, who had several times tendered himself for the purpose, had been refused. The aim of the Queen's instructions, they said, had either been entirely mistaken, or wilfully perverted.

In relation to the case of the rejected members of the Assembly, the House again asserted, that there was not the slightest color of authority for the course of the Governor in pretending to judge of the qualifications of members, so as to admit or reject them at his discretion; and that such authority would be wholly inconsistent with the nature and being of free assemblies, and would place the liberties, lives, and properties of the people entirely at the Governor's disposal, which it was believed could never have been her Majesty's design or desire. The former charge as to the reception of monies by the Governor, was again advanced, and was repeated in a manner more positive and precise, and the particulars recited were said to be "such notorious truths that it is vanity to deny them."

The Governor evaded the reception of the reply of the Assembly, and it was therefore entered upon their journal, and two days afterwards the House was adjourned by the Governor's order.

The discussion between these parties involved an important issue. The liberties of a province were concerned. If the Governor could admit or reject the members of the Assembly, according to his own discretion or will; or if his mere opinion that an Assembly did not intend to "do any thing for the good of the country" was to be considered a sufficient reason for dissolving them, the institution of a representative body would be little more than a mockery.

The supporters of the Governor endeavoured to defend and sustain him in the course he had taken. For this purpose a representation to the Queen was prepared in the name of the Lieutenant Governor and some of the Council, and was privately transmitted

to her Majesty. They set forth that they had seriously considered the proceedings of the late Assembly of the province, and felt bound to express their dislike and abhorrence of the same that they were high encroachments upon her Majesty's prerogative, notorious violations of the rights and liberties of the subject, a manifest interruption of justice, and also were most "unmannerly" toward his Excellency, the Governor. These proceedings, they said, were owing to the factious principles and conduct of Jennings and Morris, who, they said, "were known to be uneasy under all governments, inconsistent with themselves, and to whom all the confusion and factions in the government of New Jersey and Pennsylvania for many years, were wholly owing;" they were desirous, it was said, as there was every reason to believe, to encourage not only the government of New Jersey, but every other government in America, to throw off her Majesty's prerogative royal. As a remedy for these evils, they requested that her Majesty would be pleased to discountenance "those wicked designing men," and show some dislike to the Assembly's proceedings, who it was declared were resolved, neither to support her Majesty's government, or take care to defend it by settling a militia, and that a strenuous assertion of her Majesty's prerogative and vindication of the Governor's honor, were absolutely required. In this address the particulars which had been urged against the course of the Governor were only noticed by a general declaration, that the statements of the Assembly were either partial, or false.

On the 5th of May, 1708, the General Assembly again convened. The former Speaker, Jennings, being detained by illness, Thomas Gordon was chosen in his place. In the address of the Governor, his Excellency repeated most of the demands he had formerly made. He required that a bill should be enacted for raising a revenue, and stated that the Queen expected the sum of fifteen hundred pounds to continue for the term of twenty-one years. He recommended that the militia bill should be revived or renewed, as the present one would shortly expire, and also that laws should be passed for confirming the rights and property of the general proprietors, as well as to settle the titles and estates of particular persons.

In their reply, the Assembly declared that they had always

been ready and desirous to support the government to the utmost of their ability, and that they regretted the misunderstanding that had occurred between the Governor and themselves. But they stated, that they had formerly mentioned to his Excellency a number of grievances which the country laboured under, and which has not yet been removed, and they mentioned as an additional ground of complaint, that a late application for a writ for the election of a new member, had been refused. They intimated that a redress of these grievances would remove an obstruction to the full co-operation of the House in measures for the support of the government, but that they doubted not if her Majesty were rightly informed of the situation of the country, that she would never expect the settlement of a revenue further than from year to year. They stated that the present militia bill was considered so oppressive to the people that they could not consent to revive it, though they were willing to make provision for defence of the province in a way more easy to the people. They were willing, they said, to answer her Majesty's commands in confirming the rights of the proprietors, and also the titles and estates of particular persons."²⁰

The Governor finding the disposition of the Assembly to be unchanged, and that nothing could be gained but by concessions, which he was little inclined to make, immediately prorogued the House until the following September, and before the time for their meeting arrived, gave orders that the House should be dissolved.

But the administration of Governor Cornbury was drawing to its close. He had exhibited none of those qualities which were befitting his high descent, or his elevated place. His desire for revenue was the motive most strongly manifested in his administration of government in New Jersey. Ample and permanent support of the government, was the object principally sought, and this may be considered as a kind of clue to his entire career. To accomplish his purposes in this respect, he was led to the pursuance of measures not warranted by his instructions, and which were subversive of the rights of the people. To procure an Assembly more favorable to his wishes, he interfered with elections, and ventured upon the bold expedient of rejecting the members re-

²⁰ Smith's New Jersey, Gordon's New Jersey.

turned. The reception of fees for patenting lands was probably one of his objects in interfering with the action of the Proprietary Council. Whether the charges of actual corruption in office are admitted or not, his avidity for gain is sufficiently obvious. His fondness for show and expensive pleasure, subjected him to wants which the colonists had neither the ability, or the inclination to supply. He was also but illy informed in the duties of his place. He had entered upon office with but low desires; it was not to perform an exalted duty, but to secure the means of indulgence. He was therefore careless in inquiry, and deficient in knowledge, and may sometimes have committed a wrong as well from his ignorance of what lay in his path, as from the unworthiness of his aim. In the direction of government in New York, the conduct of Cornbury was no more acceptable or advantageous than in New Jersey; indeed, in the former province his character and conduct appeared in a still worse light than in the latter; in addition to ignorance and rapacity, he there exhibited arrogance and bigotry. Reiterated complaints were finally addressed to the Queen, both from New Jersey and New York, and her Majesty, convinced at length of the Governor's unfitness for so important a trust, recalled his commission and divested him entirely of power.

CHAPTER XVI.

ADMINISTRATION OF GOVERNMENT BY LOVELLACE, INGOLDSEY, HUNTER,
BURNET, MONTGOMERIE AND COSBY.

THE successor of Cornbury in the government of New York and New Jersey was John Lord Lovelace, Baron of Hurley. Ingoldsey, the Lieutenant Governor, continued in office. If the connexions of the new Governor were not so elevated as those of his predecessor, his qualifications for the place to which he was appointed were far greater. His first communication with the assembly (which met on the 3d of March, 1708,) was expressed in terms which manifested a suitable regard to the feelings, and to the rights of the colonists. He declared that he would give them no just cause of uneasiness, and expressed a hope that mutual forbearance might be exercised, and that in the endeavour to promote the interests of the province, all former differences and animosities would be forgotten. In regard to those matters which had been the occasion of former dissension, the address of the Governor was conciliatory and prudent. He stated that her Majesty would not be burdensome to her people, but that it was necessary that government should be supported, and he recommended the subject to their notice and care: that they best knew what the province could bear without inconvenience and injury, and also in what manner it could most properly be raised. He so recommended that a militia law should be prepared on such grounds as should seem likely to give satisfaction. The reply of the House exhibited a spirit of moderation, and a willingness to concur in the views and measures which his Excellency had offered to their notice. They expressed satisfaction on account of his appointment, declared that they had acted from no "animosities," but only from a desire to maintain their rights, and they did not doubt but that a hearty agreement would now be attained. They were willing, they said, to give support to the

government to the utmost of their ability, and the more so, as they should now be exempt from arbitrary exactions. This amicable interchange of sentiment was introductory to a course of harmonious action. In accordance with the Governor's recommendation, an act was passed for the support of her Majesty's government, granting the sum of seventeen hundred pounds for one year. A law was also passed for settling the militia. Important enactments were also made relating to the election of the General Assembly, and to the privileges and rights of the members. By implication, the Assembly had power under the royal instructions to make alterations in respect to the number of its members, or the mode of their election, subject to her Majesty's approval.¹ This power was now exercised by making a change in relation to the qualifications of some of the electors. Under existing regulations, the members for the towns of Perth Amboy, Burlington and Salem, had been elected by the *inhabitants frecholders* of these places respectively, but it was now enacted that the electors in the towns, as in the counties, should be *frecholders*. It was also distinctly declared that the right of determining as to the qualifications of members, was "in the House of Representatives when met in General Assembly."²

The hopes of settlement and continued prosperity which the coming and conduct of Governor Lovelace had excited, were suddenly terminated by his death. The disappointment and regret occasioned by this event, were also further increased on account of the accession of the Lieutenant Governor, who assumed the control of affairs. Ingoldsby had rendered himself unpopular in the province, and an application had been made to Governor Lovelace for a hearing in relation to the charges which had been made by Ingoldsby, and some of the Council, in their address to the Queen. A time had been appointed for the purpose, but the efforts of the Assembly had been defeated from time to time, and

¹ It was prescribed in the instructions that no such changes should be made except "by an act or acts of the General Assembly there, and confirmed by us our heirs or successors."

² It has been seen that a former Assembly had made enactments upon the same subject; but different from the present law, in many particulars.

at length, the death of the Governor, and the accession of Ingoldsby to the principal place in the province, rendered it necessary to suspend the design. At this period the distant relations of the country were such as to involve the interests, and to demand the attention of the provincial government. The French nation had acquired possession of extensive portions of country in America, and their claim had been acknowledged by England, in the treaty of 1632. A powerful and active opponent of England and of English interests, had thus become established on the borders of the American colonies. In 1702, war had been declared by England against the French, and the latter nation taking advantage of the occasion had made incursions from their possessions in America, upon the neighboring English provinces. These attempts were carried on with so much perseverance and vigor that the French forces had succeeded in penetrating into the country as far as to the Merrimack River, and had demolished Haverhill, a considerable town. The inhabitants of New England applied to the mother country for aid and support, and the Ministry projected a plan for the invasion of Canada, and other places belonging to the French. A squadron of ships was to be prepared for an attack upon Quebec, whilst a separate force, composed of troops to be furnished by the colonies, and commanded by Colonels Nicholson and Vetch, were to make an attempt by the lakes. Instructions were given to Colonel Vetch to demand the co-operation of the several colonies, and New Jersey was required to furnish two hundred men for the enterprise.³ The Assembly of the province convened in May, 1709, when the plans of the Ministry and the particular requisitions that had been made, were laid before the House by Governor Ingoldsby. A ready assent was given by the Assembly. An act was passed for raising three thousand pounds by bills of credit, to be used for her Majesty's service "in this present juncture," and particular provisions were made for enforcing the currency of the bills, when emitted.

The enterprise for the conquest of Canada was not finally prosecuted, but a part of the forces that had been raised for the purpose, proceeded, under the command of Colonel Nicholson, to

³ Smith's New Jersey, p. 362.

Port Royal, in Nova Scotia, and that place was reduced, and full possession was taken by the English.

Among the incidents deserving of notice arising out of the undertaking just mentioned, was the issue of a currency of paper, which was then first resorted to in the province. It was designed, as has been seen, to answer a pressing emergency, and perhaps this emergency could not otherwise have been met. "A paper credit currency," it has been said, "is a great promoter of military expeditions."¹ But the same expedient was afterwards resorted to, and became a part of the policy of government. It was a policy capable of being made highly instrumental either for good or for evil. It afforded the means of present relief, and gave facilities by which the resources and abilities of a community, as well as of individuals, might be more fully and advantageously developed. But it also served as a temptation to hasty and hazardous action, and to obtain an immediate good by a mortgage upon future and uncertain advantages and means. In New Jersey endeavours were made to guard against the evils of the system, by a careful restriction of the amount, and timely regulations for redemption.

At the next meeting of the General Assembly, which took place in November of the same year, the attention of the House was again directed towards the domestic affairs of the province, and an enactment was made defining more fully the qualifications of the members of the House. It prescribed that each Representative should be an actual resident within the province, and of some city, town or county of that division in which he was chosen. It was represented that much "inconvenience" might arise from the election of persons inhabiting neighboring provinces, inasmuch as such persons might be swayed by a regard to the interests of the places where they resided, rather than by a desire for the prosperity of the parts they represented. It was also set forth that it was absolutely necessary that the Assembly, when met, should

¹ Douglass' Summary. Douglass was a strenuous opponent of paper money. He says that "The Sham Canada Expeditions" in 1709 and 1711, led the province and all the other British provinces to the northward, into a pernicious paper currency called public bills of credit.

Summary, p. 285.

have full power over the members, which would be precluded if they were inhabitants of other provinces.⁵ The Assembly also passed an act to ascertain and determine the boundaries of the several counties in the province. Another enactment was made which would seem to have infringed, to some extent, upon the directions that had been given in her Majesty's instructions establishing the government. In these instructions it was prescribed, that the meetings of the General Assembly should be held at Perth Amboy, and at Burlington, alternately, unless for particular reasons, the Governor should order them differently. But it was now enacted that all succeeding Assemblies should be held at Burlington, until otherwise determined *by act of Assembly*.

During these proceedings but little communication had taken place between the Lieutenant Governor and the Assembly, and there was an appearance, for a time, of acquiescence in his government. But it was no more than an appearance. The former acts of Ingoldsby had rendered him odious in New Jersey; and he was but little more in favor in New York. At length the united remonstrances of the provinces, induced the Queen to order his recal. In the interim, before the arrival of another Governor, the chief executive authority, in accordance with the constitution of the government, devolved upon the eldest member of the Council, in the province. This individual was William Pinborne. But this officer was superseded on the 10th of June, 1710, by the arrival of Brigadier General Hunter, with the commission of Governor of New York and New Jersey.⁶ Governor Hunter was held in estimation for his social qualities, and was supposed to be fitted for civil employment. He had before been appointed Lieutenant Governor of Virginia, but had been captured by the French on his voyage to that colony.

He met the Assembly of New Jersey on the 7th of December, 1710.⁷ His address to the House was characterized by directness and an appearance of openness and candor. He said, "that he

⁵ This provision is somewhat illustrated by the occurrences of the time. It happened on some occasions that the members elected were not in their places, and the officers of the House were despatched to enforce their attendance.

⁶ Gordon's New Jersey, p. 86.

⁷ Votes and State Papers, vol. 1, p. 2.

was little accustomed to make speeches, and should not be tedious. That there had been much complaint of "unchristian divisions, an evil which all complain of, but which few took the right method to remedy. Let every man begin at home, leave disputes to the laws, injuries to the avenger of them, and as good subjects and christians, act together for the common good." He said that all must agree in the necessity of supporting government, and hoped there would be no difference about the means, and that he should heartily concur in whatever was necessary for the peace and welfare of the province. He closed his address with the noble sentiment, that "all power except that of doing good, is but a burden."

The House replied in a similar tone, although with a degree of reserve. They congratulated the Governor upon his accession to office, and were willing to hope that the time had arrived when the *causes* of "unchristian divisions" would no longer exist. They had experienced repeated instances of her Majesty's care, among which they regarded as a principal one, the former appointment of the good Lord Lovelace, by which an end was put to the worst administration the province had ever known, and they considered the appointment of his Excellency, the present Governor, as a new mark of royal favor. Let not ill-men, they said, be put or continued in power, let her Majesty's subjects enjoy their liberties and properties according to the laws, and then the grounds of disputes would be removed. They said that they had always considered it reasonable to support a government, but equally so to deny that support to oppression and tyranny. What they were able to do should be sincerely and honestly done, and in as proper a manner as they were capable of, and they should be ready to join in any thing that might be conducive to the public benefit.

The harmony that seemed to be promised by the relations between the Governor and the Assembly, was prevented or interrupted by the course of the Council. Several of the members of this body had served in former administrations, and had been concerned with Lieutenant Governor Ingoldsby, in making the representation to the Queen containing charges against a former Assembly. These persons had thus become placed in an attitude of

opposition to the Representative body, and no desire was shown at this time, to alter the relation. On the contrary, they manifested a determination to obstruct the measures of the Assembly, even, as it would seem, to the manifest injury of the interests of the province. Several bills which appeared to be rendered necessary by the state of affairs at the time, and which were certainly in accordance with the rights, as well as the wishes of the people, were rejected by the Council.* Among these was an act for ascertaining the qualifications of jurors, and enabling the people called Quakers to serve on them. In the western part of the province the Quakers formed a large portion of the population and it was found difficult to obtain juries without them, and from their habits and character none were more capable of such service; but their refusal to take an oath caused them to be wholly excluded. In the instructions of her Majesty to the Governor, he was directed to cause an act to be passed in the General Assembly of the province, like to that which had been passed in England in the reign of William the Third, allowing the solemn affirmation and declaration of the people called Quakers, to be accepted instead of an oath in the usual form. The act now prepared and passed by the House, embraced this provision so far as related to the qualification of jurors, and it was therefore not only a just and liberal measure in itself, but was also in perfect accordance with the royal instructions. But the act was rejected by the Council. One of a more general character, containing the same provisions in relation to taking oaths, but not limited in its application to the case of jurors, was also rejected in a similar manner. The militia law was also taken up for consideration by the House. The act that had been passed in the time of Cornbury, was rigid in its provisions, and but little suited to the views and opinions of the people, and many persons had been subjected to much oppression thereby, and the modifications that had been made at different times, had not been such as to remove the objection. The House,

* By the instructions of the Queen the members of the Council were to have and enjoy freedom of debate and *vote* in all affairs of public concern, and by this provision the Council were enabled to control, as they did now control, both the Governor and the Assembly.

desirous that a subject of some difficulty, should be carefully considered and acted upon, appointed a committee to prepare and report a bill.⁹ This was done. Measures were also taken to correct the abuses that had been practised under the existing law. Some of the officers who had been concerned in distraining goods, were brought to the bar of the House, and made to render an account. The bill prepared by the committee was passed by the House, and sent to the Governor and Council; but it met the fate of the preceding ones, it was rejected by a majority of the Council. These proceedings of the Council wore the appearance of mere factious opposition, and were directly calculated to excite to new activity, the irritation that had previously existed. The House, already it may be, not loth to such an engagement, was provoked to enter again upon a notice of the former acts of the Council.

The address of Governor Ingoldsby and his Council to the Queen was accordingly taken up and read in the House.¹⁰ By a vote the address was declared to be a false and scandalous representation concerning the Legislative body of the province, and that no one who had signed the address was fit to be a member of the House, and one of the members who acknowledged that he had signed it, was forthwith expelled.¹¹ A resolution was also adopted to prepare an address to her Majesty, and also to Governor Hunter, justifying the proceedings of the Assembly. In the address to the Governor it was set forth, that it had been their misfortune to be governed by Lord Corburi, who had treated her Majesty's subjects rather as slaves, whose persons and estates he might control, than as freemen, who were to be governed by laws. The Governor, they said, "had sacrificed his own reputation, the laws, and

⁹ The committee were Doctor Johnson, Isaac Sharp, Jacob Spier, William Sandford, John Reel, and Robert Wheeler. They were instructed to prepare and bring in a bill for explaining an act of this province past in the third year of her Majesty Queen Anne, entitled "an act for settling the natives of this province, and for relieving persons approved thereby."

¹⁰ This address had been signed by Richard Ingoldsby, William Fichome, Roger Monpesson, Thomas Revell, Daniel Leeds, Daniel Cox, Richard Foxnaey, William Sandford, and Robert Quarry. Fichome, Townley, Cox, Monpesson, and Quarry were still in the Council.

¹¹ Mayor William Sandford.

our liberties to his avarice." That the efforts that had been made to procure redress had proved effectual, and that no relief was experienced until the arrival of Lord Lovelace, which gave an expectation of better days. That upon the first sitting of the Assembly after the arrival of Governor Lovelace, he had communicated to them for their information, "The address of the Lieutenant Governor and Council of New Jersey," in which the addressors endeavoured to make injurious impressions upon the Governor against others, and to secure his favor to themselves by the grossest tawning and flattery. This address, said the Assembly, "from the peculiarity of the language, and the unintelligibility of the terms, ought never to be forgotten."¹² But yet it was said these addressors were not true friends to Lovelace, and had abjured against him, and Governor Hunter was warned, that he too, might expect to experience their treachery. An examination of the address of the Lieutenant Governor and Council was then entered upon. The Assembly asserted, that though it purported to be a thing agreed upon in Council, that it had not been formally assented, but that the assent of the members had been given at different times and places. That in its general character, the address was open to much objection, that it was full of epithets and vague assertions, and that if the addressors had merely sought to make show of an abusive talent, they had certainly fully succeeded. That the statements that were given in the address were said to be entirely groundless. That the charge of a design to throw off all allegiance, and to revolt from the Crown of England, could only have been made in order to mislead or to prejudice the Queen; that no sober man could believe that any such design had ever existed, or could exist. New Jersey was one of the smallest of her Majesty's colonies, and the least capable of making any defence; that it contained no fortification exceeding a stone house, and of such but few, that a great part of its people were Quakers, who from their principles were opposed to war; that under these circumstances to declare that any persons were exciting to open revolt, was a

¹² In the address to Lord Lovelace, he was told that "your Lordship has not the virtue, or more, but a complete accomplishment of all perfections," with other expressions equally extravagant.

charge scarcely less ridiculous than malicious. And as to the refusal of the Assembly to support the Queen's government, or to defend it by settling a militia, the facts themselves might be appealed to; that they had made provisions according to the ability of the province, and that lately, when the expedition to Canada was on foot, they had given three thousand pounds, and this where some of the addressors themselves had done all they could to frustrate the grant. That an act had been made in the time of Lord Lovelace for settling the militia, which had likewise met with much opposition. Several particulars were also set forth in relation to the conduct of the members of the Council, which (even with the abatement to be made in the statements, on account of party exasperation,) must yet be allowed to show, that some of the executive officers had exercised their powers in a manner oppressive and unjust, and that others had been guilty of most serious moral delinquencies.

The Assembly expressed their concern that they had so much reason to expose a number of persons who had combined to do New Jersey all the hurt in their power. They said that her Majesty had been graciously pleased to remove Lieutenant Governor Ingoldsby, a favor "for which we cannot sufficiently express our gratitude," and they intimated with entire distinctness, that the province would be benefitted by other removals. They declared, indeed, that justice could never be done whilst certain members of the Council continued in places of trust within the province.¹³

Governor Hunter received the address of the House in a manner indicating a desire to act in his office with impartiality and justice. He replied, that her Majesty had given him directions to reconcile the differences existing in the province, but if this could not be done, he should make a representation to her; and he did not doubt but her Majesty would take such measures as would give general satisfaction. But the Governor was either convinced of the justice of the statements that had been made by the House,

¹³ These persons were named, they were William Finborne, Roger Mompereson, Daniel Coxe, Richard Townley, Peter Somnans, Hugh Huddy, William Hall, and Jeremiah Basse.

Smith's New Jersey, p. 393.

or perceived that no harmony of action could be expected whilst the members of the Council, who had been complained of, were retained, and such representations were therefore made by him, as led to the speedy removal of several of the number.

The partial success that had attended the operations against the possessions of the French in America, had given encouragement for a new undertaking. Colonel Nicholson, who had directed the former enterprise, proposed to the Ministry that another attempt should be made for the reduction of Canada, and the proposal was finally acceded to. A plan was formed for an union of forces from England and the colonies, together with a body of Indian allies. In accordance with this plan, instructions were sent to the Governors of several of the colonies, requiring that measures should be taken for providing the necessary aid in men and supplies. For this purpose the Assembly of New Jersey was summoned, and met on the 16th of July, 1711. Governor Hunter informed the House that the fleet and forces from England, destined for the reduction of Canada had already arrived at Boston, and that a requisition was made upon New Jersey for three hundred and sixty men, with officers, and all to be properly furnished with pay and provisions. The Assembly responded to the demand. An act was passed for raising five thousand pounds, for, and towards the encouragement, pay, provision, transportation, and other charges of volunteers going on the expedition. This amount was to be furnished by a new emission of bills of credit. The Governor assented to the acts, and dismissed the Assembly with thanks for their despatch. But the expedition for which extensive preparations had been made, and from which much had been expected, totally failed in execution. It left a debt upon New Jersey, which, together with obligations before incurred for similar purpose, was to be met by subsequent taxation.

The circumstances of the province were not supposed to require that another meeting of the Assembly should be called until December, 1713. The Governor then addressed the House in terms of confidence and kindness. He referred to the goodness of her Majesty in removing from their places, those officers who had become obnoxious to the Assembly and the people. He said that he was persuaded that the efforts of those persons would not be able to

destroy the harmony and confidence that now subsisted between the different branches of the government.¹³ In this confidence, he recommended to the House the adoption of such measure as the situation of the province appeared to require. He urged that provision should be made for past arrears, and the future support of the government, and also for affirming and ascertaining the respective properties of the proprietors, and people.

The Assembly, in reply, expressed their satisfaction in again meeting the Governor, and hoped, that as the persons who had hitherto obstructed the welfare of the country, were now removed, the pleasure of such meetings would be oftener experienced.¹⁴ They acknowledged themselves to be under the greatest obligations to the Queen, and trusted that their actions would manifest a proper sense of the kindness she had shown. The session being thus happily opened, the House proceeded to re-enact some of the laws which had formerly been rejected by the Council, and to pass others which were supposed to be required. The sum of two thousand five hundred pounds was granted for the support of government for two years. An act was passed that the solemn affirmation and declaration of the people called Quakers, should be accepted instead of an oath in the usual form, and also for qualifying and enabling the said people to serve as jurors, and to execute any office or place of trust or profit within the province. The disabilities under which these persons had laboured on account of their testimony against oaths, were thus entirely removed. The enactment met with the ready assent of the Governor and Council, and indeed they had concurred in promoting it. A separate enactment was made for determining the qualifications of jurors; it regulated the mode of summoning them, and prescribed that all persons summoned to serve upon grand inquests, should be worth at least one hundred pounds in real estate, within the county for which they should serve, and that all persons summoned to serve on petit juries, should be worth one hundred

¹³ Pinhome, Cox, Sommers, and Hall, had been removed from the Council and soon afterward John Anderson, Elisha Parker, Thomas Byerly, John Hamilton, and John Reading, were appointed.

¹⁴ An intimation was thus given that more frequent meetings of the Assembly would give greater satisfaction.

pounds in real and personal estate.⁶⁶ The militia law of the province was settled with new and more liberal provisions. An act was also passed "for regulating slaves." The encouragement given to slavery in the instructions of the Queen, had tended to give it a permanent place in the province. The regulations now made were designed to protect the masters by preventing the elopement or absence of slaves, and also to enforce the good conduct of the latter. And it was also provided⁶⁷ that no negro, Indian, or mulatto that should afterwards be made free, should be allowed to enjoy, hold or possess any houses, lands, tenements, or hereditaments within the province, in his or her fee simple, or fee tail, but that the same should escheat to her Majesty, her heirs and successors." And it was also provided, that inasmuch "as free negroes were an idle and slothful people," that any person manumitting and setting at liberty any negro or mulatto slave, should enter into sufficient security to pay yearly and every year to such negro or mulatto during their lives, the sum of twenty pounds.⁶⁸ It was also enacted that a duty of ten pounds should be paid on every negro, Indian, or *mulatto slave imported into the province*. It may be supposed that this tariff upon slaves was established less with a view to the raising of revenue, than to the discouragement of the traffic itself. Regulations were made for the more precise determination of the limits of some of the counties, and a new county to be called "the county of Hunterdon," was created, it was taken from Burlington. To Hunterdon was given all the powers, jurisdictions and privileges that belonged to other counties, except a choice of members to the General Assembly, which was reserved until her Majesty's pleasure should be known, or until it should be otherwise ordered by the General Assembly. The people of Hunterdon were to continue, in the interim, to act with Burlington in the election of Representatives. An enactment was passed by the Assembly regulating in certain particulars the administration of justice in the courts of the province, and for reviving and continuing courts in some of the counties.

⁶⁶ The instructions required that some limit should be set in goods or lands below which persons should not serve as jurors. *Article 88 of Instructions*.

⁶⁷ Allinson's Laws of New Jersey, p. 24.

The business of the session being concluded, the House was adjourned with expressions of satisfaction from the Governor. He thanked the House for the support that had been given her Majesty's government, and the salutary enactments that had been made; some things, he observed, that "in their nature were acts of favor, I have agreed to be made acts of Assembly, that your share may be greater in the grateful acknowledgements of your country."¹⁵

A period succeeded in which nothing occurred of sufficient importance to the province to call for more than incidental observance.

The peace of Utrecht, which was concluded on the 31st of March, 1713, put an end to hostilities between England and France, and relieved the colonies from the dangers and the demands which the prosecution of the war had subjected them to. On the 1st of August, 1714, the death of Anne Queen of England, took place. Her reign had been one of importance in English history, and of especial interest to the province of New Jersey from the change which occurred in the form of its government. Upon the accession of George the First, which took place August 6th, 1714, a new commission was sent to Governor Hunter, and an Assembly was summoned to meet at Perth Amboy on the 4th of April, 1716. But difficulty arose at the very commencement of the session. It has been seen, that in 1609 an act had been passed that the meetings of the Assembly should be held at Burlington until otherwise ordered by law. This act, though not strictly in accordance with her Majesty's instructions, had been

¹⁵ The particular laws which were considered by the Governor to be "acts of favor," were not stated, but it is probable they were enactments relating to the administration of justice, especially an act for shortening law suits, and regulating the practice of the law, and an act to enforce the ordinance for establishing fees. But the conduct of the Governor was somewhat less generous than his expressions would seem to imply, for he afterwards represented that these acts would be injurious, and advised his Majesty that they should be disallowed, stating also that the laws had been particularly designed to punish the then Secretary of the province, (who was especially affected thereby,) he being a person of bad reputation. From this representation, the acts in question were made to appear, not only as injurious in themselves, but as being designed to serve a temporary purpose, rather than as important measures of public policy.

assented to by the Governor, and afterwards confirmed by the Queen. Notwithstanding this, the present Assembly had been summoned to meet at Perth Amboy. Soon after their meeting, a resolution was passed by the House that his Excellency should be waited upon with a request, that he would be pleased to lay before the House, a copy of his Majesty's instructions relating to the sitting of the Assembly at Perth Amboy. The Governor at once complied with the request. It was then resolved that an address should be made to his Excellency upon the subject, with a request that the sitting of the Assembly might be prorogued to Burlington. In the address they said, that they were entirely inclined to pay all obedience to his Majesty's and the Governor's commands, but yet they could not but think that it was their duty to observe and maintain the laws of the province; that the law respecting the sittings of the Assembly had passed through all the necessary forms, and they could not but suppose that it continued in force, and would so continue, until repealed.

In reply, the Governor stated, that he had received instructions from the King, directing the Assembly to sit at Amboy, which he was bound to obey. That the confirmation of the act by the late Queen was temporary, and continued but during her life, being part of the prerogative of the Crown which she could not part with longer, but might be resumed by the successor. Also, that for reasons of great consequence, he could not meet either Council or Assembly, at Burlington. In a subsequent communication he further stated, that the power of calling even parliaments to any particular place, being an undoubted part of the prerogative, the late Queen's approbation of the law could only be taken as dispensing with the exercise of that part of her prerogative, but that such a concession would not be binding upon her successor; and beside, that his Majesty's instructions in regard to the meetings of the House, had only restored the affair to the just and equal footing upon which it was placed at the time of the surrender.¹⁰ As the directions to the Governor had been precise, and as these were taken as his rule, the Assembly were obliged to submit, and to continue the session at the place appointed. But full satisfac-

¹⁰ Votes, vol. 1.

tion was not felt. The Speaker of the House too, Colonel Daniel Coxe, as well as some other members, were unfriendly to the Governor. Coxe had been among the members of Council formerly displaced, and the agency of the Governor in forwarding that measure, may not have been forgotten, or forgiven. These several circumstances were unfavorable to harmonious action. The business of the session was entered upon with little alacrity, and was but tardily conducted. Much time was occupied in committee of the whole House, in considering the Governor's address. At length the Governor resolved upon proroguing the Assembly, probably with the hope that time would remove, or allay, the dissatisfaction that had arisen.

But this hope, in regard to a portion of the House, at least, was not to be realized. At the time of meeting, the 14th of May, several of the members failed to appear, and among this number was the Speaker of the House. After a delay of five days, the members present, nine in number, presented an address to the Governor, requesting him to take such methods as might be deemed proper to cause the absent members to attend in their places. He accordingly sent warrants to the several delinquents, commanding their attendance, as they would answer the contrary at their peril. Four immediately obeyed the warrants, and the number then present making a quorum, proceeded, upon the Governor's recommendation, to organize the House. John Kinsey was chosen as Speaker. His Excellency immediately delivered an address, expressing much satisfaction at their selection of a Speaker, and remarked, that the conduct of the former one gave sufficient evidence of a combination between him and his associates to prevent the transaction of the necessary business of the province, and he hoped that all would be made sensible of the sinister arts and practices of these persons, so that no further evil might be done. He recommended that the support of the government should be provided for, and the bills of credit renewed, in order that the province might be seasonably provided with a currency for ordinary uses.

The House, as now constituted, seemed quite ready to second the Governor's views; one of their first measures was an inquiry concerning the conduct of the late Speaker, and the absent members, which after some discussion resulted in the expulsion of the

whole from the House.²⁰ An address in reply to the Governor's communication was also agreed to. In this it was said, that his Excellency's administration had been a continued series of justice and moderation, and that the House would not be wanting in endeavours to make a suitable return. That the late Speaker of the House had given a new proof that in all situations it had been his study to disturb the tranquillity of the province, and to act in contempt of the laws and government; and a hope was expressed that his expulsion would be considered as a sufficient vindication of the character of the House from any suspicion of a concurrence in his purposes or acts. Complaisance to the Governor, or indignation against the conduct of the factious members, carried the House still farther. It was resolved, that these members should not be admitted to their seats during the session, even if returned by a new election, and at the next sitting of the House, when some of these persons were so returned, the resolution was adhered to.²¹

These proceedings occupied much of the attention of the House and the meeting closed, with the important result of a restoration of harmony between the branches of the government, but with little beside.

On the 27th of November, of the same year, the Assembly was convened at Chesterfield.²² The Governor represented the necessity of adopting immediate measures for the support of government and the public credit, as the funds provided for the former were wholly exhausted, and as the latter had suffered greatly in

²⁰ The expelled members were Col. Daniel Coxe and Richard Ball, members from Gloucester, Henry Breckholst and David Ackerman, from Bergen, William Hall and William Claws, from the county of Salem, Henry Joyce, from the town of Salem, and Jacob Hulings, from Cape May. Jacob Spicer, from Cape May, being brought before the House at its next meeting, by the Sergeant at Arms, prayed the House to pardon his absence, it not being wilful, or with contempt, "having had more than ordinary occasions which had detained him from attending the service of the House." Whereupon the House "were willing to be favorable to him, and ordered that he be discharged upon paying his fees." He was then directed to take his seat.

²¹ Richard Bull, from Gloucester, and William Hall, from Salem, were thus returned. The House declared that "they could not recede from their former resolves."

²² By reason of the Small Pox being at Burlington.

consequence of failure in the collection of taxes, and he trusted, as they were now met with good dispositions, and without any "clogs or bars," they would be able to pursue the objects of their meeting, and make good the engagements and promises contained in their former addresses. The House proceeded in accordance with these recommendations. A ground of former difficulty was entirely removed by an act repealing the act which directed that the sittings of the Assembly should be held at Burlington; that act, it was said, "being contrary to royal instructions, and being found prejudicial to the eastern division." The finances of the province were inquired into, and the amount and causes of the deficiency determined.²³

The expenses required by the late military expeditions had rendered it necessary to contract a large debt by the issue of bills of credit; but it was asserted that the provisions for sinking these bills would have been quite sufficient, if faithfully observed and carried out. Enactments were therefore made to enforce the collection of arrearages from delinquent counties; for the more regular appointment of Assessors and Collectors, and for holding these officers to closer accountability. As a further means of increasing the revenue, an excise was laid upon all spirituous liquors retailed within the province, and it was expressly declared that the amount should be used, for, and towards the support of the government. To meet the present necessities, an act was passed for a new issue of bills of credit to the amount of eleven thousand six hundred and seventy-five ounces of plate. A bill was agreed to for the support of government, for three years, which assigned to the Governor the sum of six hundred pounds per annum.²⁴

After a meeting which terminated without the transaction of any important business, the General Assembly convened at Perth Amboy on the 13th of January, 1718. The Governor informed the House that the revenue was again exhausted, and mentioned

* More than seventeen hundred pounds in bills of credit were yet out, and the treasury empty.

²⁴ The Chief Justice was to receive one hundred pounds, the Attorney General fifty pounds, the members of Council, who attended during the sitting of the House, five shillings per day, and the Representatives five shillings per day.

also, that the salaries of the public officers were so small and so retrenched from what they had been, that the officers were not properly supported; and an augmentation was asked. He stated that the Assembly of New York had passed a law for running the division line between the two provinces, with the expectation that a similar measure would be adopted in New Jersey. He also recommended, that an agent should be appointed to represent the interests of the province in England, no other province being without such an officer; and that on several occasions he had himself employed persons, at much expense, to transact business that could not properly be delayed. The Assembly stated, in reply, that although they were sensible of the importance of having an agent in England, the circumstances of the province were such that suitable provision for the maintenance of such officer could not immediately be made. In accordance with the Governor's recommendation, an act was passed for determining the line of division between New York and New Jersey, and another for settling the boundary between East and West New Jersey.²⁵

The Assembly was not again convened by Governor Hunter. In 1719, he left the province for England, but expressed an intention, with the King's permission, to return; this intention however was not fulfilled; upon his arrival in England, an agreement was made by which his government was exchanged with William Burnet, Esq., for the office of Comptroller of the Customs, and he latter soon entered upon office.²⁶

William Burnet, Esq., was the son of the well known prelate, Bishop Burnet. If the new Governor derived no celebrity from nobility of birth, he inherited a name that piety and learning had raised to distinction. His intercourse and intimacy with the late Governor enabled him to acquire in advance, some knowledge of the state of affairs in the province, as well as of the character of

²⁵ The Commissioners appointed under the first act, fixed the northern point of division in latitude $41^{\circ} 40'$. Nothing was done under the latter act.

Gordon, p. 91.

²⁶ Governor Hunter had conducted himself in office under circumstances of great difficulty, with a degree of prudence and address, and the Legislature both of New Jersey and New York expressed their approbation of his course.

parties and of men; and he entered upon his duties at a time when the relations between the different branches of the government appeared to be of the most amicable kind. But the new Governor was either less cautious, or less fortunate than his predecessor. The province, as has been seen, was encumbered with debt, and the Assembly in the former administration had shown a laudable care and concern on this account. The same Assembly was convened by Governor Burnet on the 28th of February, 1721. At that time the Governor set forth the favorable opinions he had entertained of the Assembly from the character given of them by his predecessor, and said that he was further encouraged in his expectations from them, by the loyalty which the neighbouring province had shown in granting a revenue; and that as this colony was increasing in people and property, the support of government would be easier than it formerly was. He stated that he had found the salaries of officers lessened when they should have been increased, and that the credit of the colony was suffering for the want of a larger amount of bills for currency. He hoped that these deficiencies would be effectually supplied, and reminded the House and the people, of their great happiness in being under his Majesty's government, and expressed a hope that a just sense of the blessings they enjoyed, would dispose to such manifestations of duty and gratitude, as might be expected from good subjects, to such a prince.²⁷ The reply of the House was extremely guarded and brief. They congratulated his Excellency upon his accession, and stated, that they should use their utmost endeavours to serve their King and country, under the difficult circumstances that existed. The coldness shown by the Assembly in their address, and their imperfect compliance with his wishes, induced the Governor to prorogue the House at an early period, and he used the occasion to make a still further declaration of his expectations and views. He said, that he had hoped to have found in them a disposition suitable to the character that had been given of them, but that their past resolves had fallen short not only of his own expectations, but also of his Majesty's instructions to him. His Majesty, he said, had expressly directed, that all laws made for the supply and support of govern-

²⁷ Minutes, vol. 1.

ment should be indefinite and without limitation, except the same should be for some merely temporary service. The meaning of this instruction, he said, would appear from the practice of the Parliament of Great Britain, who at the *accession of a new Prince*, settled a revenue for the support of the government *during the life of the Prince*. He had proposed them, he said, that they might begin anew, and show their loyalty by a due regard to his Majesty's commands. He also observed, that long sittings of the Assembly were a great burden and expense, and that if they should once *settle a lasting revenue*, they would be able to go through the other business in much shorter meetings, which he promised they should have, as often as they desired. It could hardly be expected that the recommendations of the Governor in the particulars just mentioned, would be very acceptable; and communications were made at the next meeting, but little more calculated to give satisfaction. The Governor stated, that the laws heretofore passed by the Assembly for regulating the choice and the qualifications of members, were not in force, having never been confirmed by his Majesty; but that the instructions given by her late Majesty, Queen Anne, upon these particulars, were still the law, and were to be observed; he also stated, in reply to a request that the members might be sworn in their own House, that it was necessary that every member of the House should be sworn before the Governor. A reply was made by the House, and several resolutions relating to the demands and the course of the Governor, were also adopted. In these modes, they asserted, that they were, and had always been disposed to show their loyalty to his Majesty, in such manner as the circumstances of the province would allow; that it had not been unusual for the members to be sworn in their own House, for which reason they had made the request; and that all laws passed by the Governor, Council and Assembly, were in force until they were *disallowed* by his Majesty, or repealed in the province. They objected to the "intermeddling" of the Governor with the business of the House, which they considered to be a breach of their rights and privileges. They also complained on account of his demand for permanent support of the government, and of his assertion that unless such provision should be made for at least five years, he would pass no bill. An

act for the support of the government for two years was then agreed to by the Assembly, and full provision was made for raising the amount by taxes. But this enactment failed; the Council, assuming unusual authority, made numerous amendments to the bill, and returned it to the House; the latter, however, denied the right of the Council to amend a money bill, and thus the government was left without any support. In noticing these proceedings the Governor indulged in rather angry remark. He told the House that they seemed fond of the word privilege, though what they had of that kind, was owing to the goodness of the Crown; and he declared that "your conduct has carried in it so much indignity to his majesty, and would prove, if not timely prevented, such an oppression to the colony, that I will rather serve for nothing, and spend my own fortune in the defence of his Majesty's honor, and the welfare of the province, than ever give way to it." He thereupon dissolved the Assembly "from being, sitting, or acting any more as the General Assembly of the province." The disagreement that occurred at this time between his Excellency, and the House, was in strong contrast with the harmony that had existed between the same body, and Governor Hunter.²⁸ The urgency of Governor Burnet for an increased and permanent revenue for the support of government, at a time when the province was embarrassed; his apparent anxiety to restrict the action of the Assembly; together with the assumptions of the Council, were calculated to excite dissatisfaction. The Assembly too seemed quite uncomplying. In addition to the reasons just mentioned, they doubted the propriety, and even the legality of the continuance of the Assembly which the former Governor had called, and their reluctance to longer service was not disguised.²⁹

* The Governor seemed to be sensible of this difference, and in explanation thereof said, that his predecessor "had the misfortune in the late Queen's time not to be supported at home in his just demands, and when a Governor is so unfortunate as not to be sufficiently protected at home, it may induce him to compliances which he could not otherwise justify."

† The Governor produced special instructions from the Lords of trade, warranting him in continuing the Assembly, which, it was said, was "exactly conformable to the practice in Ireland, where one Parliament has subsisted under different Governors since his Majesty's accession to the throne."

Not long after the dissolution of the House, a new one was called.³⁰ In modified and somewhat softened terms, the Governor presented to the new Assembly, the wishes and views he had formerly expressed. He did not doubt that after so long a time had been given to weigh and consider every particular, they had brought with them a resolution to support his Majesty's government in an ample and honorable manner; with commendable generosity he desired them "not to think of me," but to make fuller provision for the interior officers of government. He again adverted to the great advantages enjoyed under his Majesty's reign, and enlarged upon the great deliverance that had been experienced in an escape from under the rule of "a Popish King and a French government." The expressions, as well as the acts of the new Assembly, accorded in a great degree with the Governor's views. One of their earliest measures was the passage of an act "for the security of his Majesty's government in America." It was chiefly designed to provide securities against the designs, and acts, of the adherents to the Popish religion. It was supposed that the people of this faith, if not especially opposed to the government of the province, still felt themselves at liberty, and indeed felt bound, to use every exertion for the restoration of Popish supremacy. At the first institution of the government, Papists had been expressly excepted from the grant of liberty of conscience, and by the present act they were subjected to rigid restrictions. It was made lawful for any two or more Justices of the Peace, to administer and tender a certain oath and declaration, to any whom they might suspect of being dangerous or disaffected to his Majesty's government, and if any such persons should refuse to take the oath, and make the declaration, they were to be esteemed and adjudged to be *Papish recusant convicts*, and as such should be proceeded against.³¹ Whether any particular ap-

³⁰ The Assembly was dissolved on the 26th of May, 1721. The precise date of the meeting of the new one is not known, but it was in the early part of the same year.

³¹ Suspected persons were required to swear that they would be faithful, and bear true allegiance to his Majesty; and that they did as then bears abhor, detest, and abjure that impious and heretical doctrine, and position, that princes

peunances or acts had been noticed, calling for such restraints, is not known; but, if in conformity with the royal instructions, and with the temper of the English government at the time, and with the Governor's views, they were yet but little in harmony with the broad declarations in regard to freedom in religious matters, that had been made in the province, at a former period. The act passed for the support of government at the present sitting, also measurably accorded with the Governor's desires; it was to continue for the period of five years. But the liberality of his Excellency's expressions in regard to provision for himself, was perhaps too strictly interpreted. The salary formerly granted to Governor Hunter, was reduced by one hundred pounds; but five hundred being now allowed. Yet full satisfaction was expressed, and the Governor dismissed the House with thanks for their proceedings, and particularly for the cheerful and honorable support that had been given, and for the act for the security of his Majesty's government in the province, the latter of which he regarded as "the noblest present of the two."

At the next meeting of the Assembly, which took place in 1723, the attention of the House was particularly directed toward financial concerns. The Governor stated in his address, that the provision they had made for the support of the government, had left him but little to ask in that respect, but he thought proper to remind them of the indebtedness of the province. Numerous petitions were also received from the people, representing the great want of a paper currency. It was stated that the province had been drained of a specie currency by reason that the produce of the country had been chiefly sold in neighbouring provinces, where a currency of paper was in circulation, and which the people had

ex-communicated by the Pope, may be deposed or murdered by their subjects, or by any other person. They were also to swear that they would bear faithful and true allegiance to his Majesty King George, and that the pretender had no right or title whatever, to the Crown of Great Britain. In the declaration, they were required to testify and declare as their belief, that in the sacrament of the Lord's Supper, there is not any transubstantiation of the bread and wine into the body and blood of Christ, and that the invocation or adoration of the Virgin Mary, or any other Saint, and the sacrifice of the mass, are superstitions and idolatrous.

Allinson's Laws of New Jersey, p. 61.

been obliged to receive; yet this foreign currency was not a legal tender in the province, and therefore was not received in the payment of taxes. To meet the several objects in view, the Assembly resolved upon a new expedient. They authorized the emission of forty thousand pounds in bills of credit, to be issued principally in loans. The amount was to be distributed, in a certain proportion, among the counties, and the issues to be made through offices established for the purpose. The bills were made a legal tender in all transactions, and a certain portion was specifically applied to the redemption of the bills of credit formerly emitted, and the interest thereon. An interest of five per cent. upon all loans was demanded, and the interest accruing, was to be appropriated in part, to sinking the bills, and in part, to the support of government, under the direction of the Governor, Council, and Assembly.³² This policy was afterwards continued, and the loan office, came to be an important instrument in the management of the financial business of the province.

It seemed to be the misfortune of Governor Burnet, (or as he may have regarded it, his advantage,) to be highly instrumental in controlling and annulling provincial legislation. Beside the instances already noticed, he received and communicated new instructions at his period, from the Lords of trade and plantations respecting several acts that had passed in the former administration. He was informed that three acts which had been transmitted for approval, one for shortening law suits and regulating the practice of the law;

³² The bills emitted under this act were to be used as a general currency, and served a similar purpose as the banking bills of modern times. The operation, however, was entirely different from banking. The authority and credit of the government served in place of original capital, and the issues were made upon real and not personal security. No loan was made except on plate, or landed estate. The advantage to the government was in the reception of interest upon an amount of capital that had cost it nothing, though bound to see that it was fully redeemed. The advantage to the people was in the possession and use of that which would be received in all transactions, and which, if it had cost nothing to the government, had served as money to them. The capital would therefore be willingly returned by the borrower, with the addition of interest, and still more, as this additional amount (being used for the purposes of government,) if not paid in interest, must, at least in part, have been paid as tax.

another for acknowledging and recording deeds within each of the respective counties of the province; and a third for enforcing the observation of the ordinance for establishing fees, were disallowed by his Majesty. The scope of these acts, it was said, was to take away the accustomed fees of office from persons who enjoyed the same by immediate patents from the Crown, by which appointment of the Crown *the dependence of the plantations* was in some measure secured to Great Britain; and therefore the Lords, as they said, had counselled his Majesty that these laws should be annulled, they "appearing to us to be great encroachments upon the prerogative of the Crown."³³

In regard to the judicial department, the authority of the Governor was also brought into exercise. The Assembly made an humble address to his Excellency, representing the great inconveniences the people were subjected to, from the operations of the ordinance directing the meetings of the courts of judicature, and asking leave to bring in a bill to remove the hardships under which the inhabitants laboured. The address was considered by the Governor and Council, and they resolved, that it would be proper that alterations should be made in the ordinance, but that leave could not be given to the Assembly to bring in a bill, as prayed for, because, by the commission of his Majesty the Governor was vested with the power to establish and regulate the courts of judicature, and the action of the Assembly therein, would deprive his Excellency of his proper authority. Another question of some importance arose at this period. It related to the constitution of the General Assembly, and the authority by which it existed, and might be changed. The erection of Hunterdon into a county has been noticed, and also the suspension of the election of members to the Assembly, until the pleasure of the Queen should be known. No decision was made by the Queen, but the matter was determined

³³ From the communication of the Lords, it appeared that both Governor Hunter and Governor Burnet had represented that these laws should be repealed, as they were injurious to the jurisdiction of the Supreme Court, and reduced the fees of the patent officers so that they could not subsist. These laws, however, if not well adapted to the full support of his Majesty's officers or of the royal prerogative, were considered by the people as highly important to their interests.

by her successor, his present Majesty. His Majesty referred the question as to his authority in the case, to his legal advisor, and required an opinion. The Attorney General, Raymond, advised his Majesty, that "*as the right of sending Representatives to the Assembly and the qualification of the electors and elected, depended upon his Majesty's instructions, he might make any alterations that were required, and therefore, might empower the new county of Hunterdon to send two Representatives, and restrain the town of Salem from sending any.*"⁵⁴ The Governor was instructed accordingly. The declaration that the right of representation depended wholly upon his Majesty's instructions, went to the complete subversion of English liberty. The decision was not made upon the ground of any pretended representation of the colonists in England, but upon the broad assumption that the right of representation in the province, depended entirely upon the will of the King. Such questions, it has been said, could only be settled by a revolution.⁵⁵

The General Assembly that was convened in 1721, continued in being until 1727, and a period of more than two years had elapsed in which no meeting had been called. The protracted recess, as well as the long continuance of the same body, was a cause of dissatisfaction among the people: they regarded the frequent renewal of their deputies, or the frequent opportunity of renewal, as an important security to their interests. Their wishes were complied with, and a new Assembly was convened on the 6th of February, 1727, but no business of particular importance was then transacted.

In the latter part of the year 1727, Governor Barnet departed from the province, being appointed to the government of Massachusetts Bay. He had strenuously upheld the royal authority, and his own, and resisted every attempt toward an extension of popular privileges.

⁵⁴ Chalmer's *Opinions of Lawyers*, vol. 1, p. 267. Upon the grant to Hunterdon, it was thought necessary to take the right of electing members from them, in order that the proportionate weight of the two divisions of the province might still be preserved.

⁵⁵ *Fisk's United States*, vol. 1, p. 88.

The successor to the office of Governor of New Jersey and New York, was John Montgomerie, Esq.; he received the seal of office on the 15th of April, 1728. The condition of the province in regard to its internal interests, continued nearly the same throughout the entire period of his continuance in office.³⁶ But an effort was made with a view to procure an important alteration in the administration of government. The connexion between New York and New Jersey in being included together under one Governor, had been a cause of injury, rather than benefit to the latter. As the smaller province, it had been placed in a kind of dependent relation, and had experienced the evils which such a relation between political societies, frequently brings. The connexion at first had been but reluctantly yielded to by New Jersey, and an entire separation was now desired and sought. In 1728, a motion was made in the General Assembly "whether the having a distinct Governor for New Jersey, be, in the opinion of this House, for the advantage of the province, or not." This motion, after full consideration and debate, was carried, and it was also resolved that a deputation of members (which was at once appointed) should wait upon the Governor and Council, and inform them of the action of the House, and desire their concurrence therein; and also, to request a conference as to the proper mode of proceeding in the case. The deputation were instructed to inform the Governor, that no unfavorable intentions towards him had prompted the action of the House, but only a desire to secure the object in view whenever a new commission should be given. A petition to the King upon the subject was also prepared.³⁷ This application

³⁶ The only legislative enactment of this period requiring notice, was "an act for securing the freedom of Assemblies." By this "freedom," however, it was only meant that the members should not be bound by any engagements in office which might embarrass their action as Legislators. The act provided that any member should accept of any office of profit from the Crown, or from the Governor for the time being, during such time as he should continue a member, his election should be void, and a writ for a new election should be issued.

³⁷ In this petition it was represented that his Majesty's loyal and dutiful subjects, the Representatives of the province of New Jersey, confided in his Majesty's care, and in his desires for their advantage and prosperity; that the people of New Jersey had been placed under the same Governor with his Majesty's

though not attended with entire success, may be supposed to have opened the way for other, and more effectual attempts, at a subsequent period.

After the death of Governor Montgomerie, which occurred in July, 1731, Lewis Morris, the President of Council, administered the government until the 1st of August, 1732, when William Cosby, Esq., arrived in the province with the commission of Governor. The General Assembly met on the 26th of April, 1733. An interchange of amicable expressions took place between the new functionary and the legislative body. At an early period a desire was manifested by the Assembly, that some fuller provision should be made in relation to the meetings of the Representatives. The extended periods between the meetings of the Assembly, as well as the periods between elections, had been much complained of by the people. An act was therefore passed for the frequent meeting and calling of the Assembly, and for the alternate sitting hereof.²⁸ It provided for the meeting of the Assembly at least once in three years, alternately at Burlington and Perth Amboy, and for triennial elections. This act was assented to by the Governor and Council, but it was afterwards rejected by the King. The particular grounds of the rejection are not stated, but a similar enactment in New York was disallowed, because of its being, as it was said, a high infringement upon the prerogative of the Crown. Other enactments of the present Assembly failed in a similar manner. The rejection of three acts that had been passed in the time

province of New York, which had been attended with many disadvantages: that the government of New York had taken up so much of the Governor's time that but a small part could be given to New Jersey; and that applications to him could not be easily, and sometimes not seasonably, made. That the principal officers were frequently officers also of New York, on which account they were less useful in their respective places in the province; and also that the money they received for salaries, which was drawn from the province, was elsewhere expended. It was also represented, that though it might properly have been thought too great a burden for the province to maintain a Governor, the people are now willing to support a Governor amongst themselves, and the petitioners prayed that such an appointment might be made.

Sadler's New Jersey, p. 424.

²⁸ Votes, vol. 1.

of Governor Hunter, has been noticed. The object of these laws was considered of so much importance in the province, that its attainment was again attempted. Acts were passed for shortening law suits and regulating the practice, and practitioners of the law and other officers; concerning the acknowledgment and registering of deeds, and other conveyances in the several counties; and for the enforcement of an ordinance regulating fees. These enactments would have operated much to the convenience and advantage of the people, but would have been injurious to the interests of certain officers appointed by the Crown, or the Governor. With some amendments, (to which the Assembly agreed,) these acts were passed by the Governor and Council. But they were afterwards rejected by his Majesty.

Although concurrence in action had been maintained to a degree, between the different branches of government, yet in point of union and feeling, the relations between them were by no means close. Beside that the proceedings of the Assembly in the particulars noticed, were not entirely approved by the Governor, the House ventured upon a representation to him, concerning the appointment of the Council. They said "they were humbly of opinion that it would be of great benefit to this province, that the gentlemen of his Majesty's Council should be of credit, estates, and abilities, constantly resident, with their families within the province; to the end they might be acquainted with, and concerned for the interest thereof."³² The Governor somewhat briefly replied, that he would take care concerning the matters mentioned, and observed, that he thought no Governor would recommend any to be of his Majesty's Council, but such as were men of credit, estates and abilities. The long continuance of the sitting of the Assembly, beside the character of their measures, was disapproved by the Governor, and whilst the business before them was yet unfinished, (some of the bills just mentioned being yet pending,) he thought proper to order an adjournment; he adverted to the great expense that was incurred; expressed his dissatisfaction that no provision had been made for his support, and that they had yet done so little for the good of the

³² The members of Council and the principal officers of the province frequently resided in New York, and much inconvenience was experienced in consequence

province. "A small recess," he said, "and the opportunity of consulting with your constituents, may better prepare you for the despatch of business." It is possible that the "small recess" may have had an effect upon the despatch of business. After the completion of the measures that had been entered upon, an enactment was made for a new emission of bills of credit to the amount of forty thousand pounds, and a bill was passed for the support of the government, for the period of three years; five hundred pounds per annum was given to the Governor.

Governor Cosby continued in office until his demise, which occurred in 1736.

At that time the application for an entire separation from New York was again presented to the King. A petition was offered in the name of the President, Council, the Speaker and some of the members of the House of Assembly, on behalf of themselves and others of the inhabitants of the colony. The Grand Jury too, returned to serve for the Supreme Court of Judicature, presented a similar petition.* These petitions, which were presented by the agent of the colony, were referred to the Lords of trade, for their consideration and advise in the case. During the pendency of the application, the administration of the government of the province devolved on John Anderson, the President of the Council, and his death occurring very soon afterwards, the direction of

* The petition of the Council and Assembly was dated May 11th, 1736. They stated that upon the surrender of the government to Queen Anne, the proprietors and inhabitants had reason to hope that the Governor then appointed would have been distinct from the person appointed for New York, but to the great disappointment of the colony, the same person was appointed for both, which mode has continued. That the great value of the government of New York had induced the Governor to prefer that province for his residence, and also in many instances to prefer its interests, to the prejudice of New Jersey; that great delays had occurred in the management of the government, and in the administration of justice. And they stated that the people of his Majesty's province of New Jersey, were equally willing and able to support a distinct governor as many of the neighbouring colonies. They therefore prayed that his Majesty would be pleased to commission a person to be their Governor, distinct from the person to be appointed Governor of New York. The petition of the Grand Jury was dated on the same day as the other, and was very similar in tenor.

affairs was assumed by John Hamilton, Esq., the next member of the Council. The latter continued at the head of the government for nearly two years, when a Governor of New Jersey, distinct from New York was appointed.

The Lords of trade having considered the applications referred to them, reported, that they were of opinion that his Majesty should comply with the prayer of the petitioners for a separate Governor.⁴¹ Accordingly, in 1738, a commission was given to Lewis Morris, Esq., appointing him Governor of New Jersey.

⁴¹ Their report was dated August 5th, 1736.

CHAPTER XVII.

MORRIS', HAMILTON'S, AND BELCHER'S ADMINISTRATIONS.—THE
FRENCH WAR.—CHANGE OF GOVERNORS.

GOVERNOR MORRIS had been active in procuring the separation from New York. He had also held important places and had performed the highest services in New Jersey. The appointment of such an individual to the chief place in the government, together with the separation of the province from its former embarrassing connexion, were regarded as circumstances highly favorable to future prosperity. Under the new organization, some change took place in one particular in the action of the government. The Council were made a separate branch of the Legislature; the Governor refraining from *immediate* participation in any measure relating to Legislative proceedings.¹ The General Assembly convened on the 27th of October, 1738. In an address made by the Governor to the Council and Assembly, he spoke of the indulgence of his Majesty in allowing the province to be separated from New York, and in appointing a person to the government whose conduct was well known to them. He recommended with some urgency, that the support of the government should be provided for, in a manner corresponding with the assurances that had been given as to the dispositions and the ability of the people. He stated in general terms, that he should be willing to give his assent to all bills that were proper for his approval, and others, he hoped, would not be proposed. The Assembly acknowledged

¹ The Governor had formerly presided in the Council when considering and acting upon laws. He now entirely withdrew. The change, however, was chiefly one of *form*. The Governor retained the same authority in rejecting laws as before. Yet although the respective spheres of action of the Governor and Council may have continued almost the same in extent, a greater degree of freedom of action may have been gained by the Council, and an addition of dignity by the Governor, in consequence of the change.

in terms of much warmth, the favor that had been shown by his Majesty, both in granting a separate Governor to the province, and in the appointment of the person. "The Governor," they said, "was a person well known to ourselves to be eminent for his great skill in affairs of government, which we more than once have had experience of; and from his knowledge of the nature and constitution of this province, and other advantages of learning, if his inclinations and endeavours to promote our welfare bear any proportion to his abilities (which we have no reason to doubt,) is every way qualified to render us a happy and flourishing people." The Council also replied with similar expressions; they stated also the satisfaction that was felt on account of their separate and distinct establishment as a part of the Legislature of the province.

But the future course of proceeding was not entirely answerable to this auspicious beginning. It was probably supposed by the Assembly that the circumstances of the time were particularly favorable for securing and for the extension of popular privileges and rights, and their measures were taken accordingly. But the Governor exhibited in the discharge of his new responsibilities and duties, the same intractable and resolute temper that had formerly been shown, when acting with the people. Hence entire unanimity was not long maintained. Several measures which had been formerly agitated, were again brought forward in the Assembly. Bills were introduced for the more frequent election and meeting of Representatives in the General Assembly; for shortening law suits, and regulating the practice and practitioners of the law; and for recording deeds in each of the counties. These embraced the substance of enactments formerly passed, but which had been rejected by his Majesty. An application was also made to the Governor praying him to regulate a table of fees, in order that the same might be passed into a law. Some of these bills (with amendments by the Council,) were finally passed by the Legislative authorities, but the assent of the Governor was withheld. Concerning the petition for the regulation of fees, his Excellency said, that he would consult with the Council, "and do all that was reasonable therein." After some delay, a bill for the support of the government was agreed to by the Assembly. It provided for the appropriation of one thousand four hundred and

fifty pounds per annum, for three years, out of the interest accruing upon bills of credit. Of this amount, one thousand pounds per annum was granted to the Governor, to whom also a specific grant of five hundred pounds was made in consideration of his services in obtaining the separation of the province from New York, and sixty pounds yearly for house rent. The salaries of the other public officers were also determined.² But this provision was by no means satisfactory to the Governor. It was, he said, less ample than might have been expected, from the promises made to his Majesty, and the circumstances of the province: that the salaries were too scanty for the services required; that some officers had been entirely omitted, and that no provision was made for incidental expenses.³ The course of the House was so little in accordance with his Excellency's views, that he determined to dissolve them, which was accordingly done on the 15th of March. In his address on the occasion, he reviewed the proceedings of the House, particularly in reference to the bill for the support of government, and expressed himself in language more harsh and imperious, than even a strong sense of his duties and his rights could possibly have required.

The session of the next Assembly commenced on the 10th of April, 1740. The Governor set forth to the new Assembly the errors and delinquencies of the former one. "I suppose," he said, "you are wiser than to believe that if the Council and Assembly pass a bill, that by their doing so I am under any obligation to pass it into a law, unless I am satisfied that it is reasonable and fit for me to do so: because that would be altering the present con-

¹ To the Chief Justice was given one hundred and fifty pounds, to the second judge, forty pounds, the Attorney General, forty pounds, each of the Treasurers fifty pounds, and other officers proportionably.

² The Governor was displeased, not only with the amount of the grant, but so on account of the manner of making it. The bill had been long delayed, and a motion for the specific grant to the Governor had at one time been rejected by the House, upon which occasion a positive and rather harsh communication was made by him. The statements made as to his services in the business, or a truer sense of justice, afterwards induced the House to agree to the grant, but his Excellency seems to have received an unfavourable impression as to the intentions of the House.

stitution and rendering the Governor a nominal, rather than a real part of the Legislature. And I hope you are more honest than to deny, or render uncertain and precarious, the support necessary for the government to have, or to attempt by that or any other method or art, to constrain the Governor to pass any bill into a law that he should conceive not fit for you to have, or him to assent to." A second opportunity was now given, he said, for serving the country by passing such laws as were necessary, or amending those that were defective.

The reply of the House manifested very distinctly, a disposition to vindicate the course of the former Assembly, and contained some pointed reflections upon the conduct and expressions of the Governor. They "sincerely sympathized" with his Excellency and the people of the province, upon the disappointment caused by the failures of the former House. But it appeared to them, they said, that progress had been made by the Assembly in preparing such bills as were greatly needed, and much desired in the province, but why these bills had not become laws, they would not pretend to determine. They were never tempted to believe, they said, that the Governor was under any obligation to assent to a law that he did not approve; but suggested that the defects of such as were presented to him might be pointed out to the Assembly or the Council, in order that they might be reconsidered and amended. They were grateful, they said, for the opportunity that was given, to use their endeavours for the welfare of the province. At an early period some of the bills of the former session were again taken up, and others were introduced of a similar tendency. The bill for the frequent meeting of the Assemblies was modified by proposing the septennial election of Representatives, and in that form was passed by the House. No decisive action had been taken by the Governor upon the application to regulate a table of fees, but a bill for this purpose was prepared by the Assembly

* A suspicion here seems to be intimated that the tardiness of the former Assembly in passing the bill for the support of government, arose from an intention to coerce the Governor into an agreement to the measures brought forward in the House. These measures indeed were acted upon in advance of most other matters, but this their importance would warrant.

A bill was also introduced to limit the action of the Supreme Court, providing, that no action under fifteen pounds should be taken into that court.² But no further point was reached toward the attainment of the objects sought by these several enactments that had been gained by the proceedings of the former Assembly. The difficulties between the Assembly and the Governor were further increased at this period, in consequence of the introduction of a subject connected with the foreign relations of the province. A quarrel had occurred between England and Spain, on account of occurrences in their American possessions, and in 1739 a declaration of war was made. On such occasions the English colonies were not forgotten by the mother country: their co-operation was mostly promptly required, and mostly was promptly rendered. The demands of his Majesty for a number of troops and for supplies from the colonies, were communicated to the Assembly by Governor Morris, and speedy compliance was urged. But the House was then desirous to adjourn, and permission was solicited for a short recess, which it was thought might not be inconsistent with a proper attention to the measures proposed. His Excellency professed a willingness to accede to the request of the House, but conceived that it could not be done consistently with his Majesty's directions, and insisted upon immediate action; he stated, however, that when he should see "effectual and proper resolutions entered into, upon which I can depend," the wishes of the House should be considered. A refusal so ungracious in itself, and so ungraciously made, was not well calculated to forward the object in view. But the necessary measures were taken by the Assembly; a

A very large portion of the judicial business of the province was transacted in the Supreme Court, and this circumstance, with the want of a regulation of fees by law, exposed the people to much inconvenience as well as exaction. But his Majesty and the Governors were desirous, rather to extend, than to lessen the influence belonging to the principal places and offices, in order that the province might be kept under closer control; Governor Morris said, that the bill for limiting sessions in the Supreme Court was not "at present convenient for his Majesty's service, or beneficial for the inhabitants, but rather otherwise." The act for the septennial election of Representatives, he said, "I do not take to be a right one; we are entitled to, but a favor, which a suitable conduct in you can only induce his Majesty to grant, or me to recommend to his Royal consideration."

bill was passed for procuring supplies, and for giving currency to two thousand pounds in bills of credit, to defray the expense. But these bills were to be sunk by an appropriation of the interest money to be received in the treasury, a mode of proceeding which was strongly objected to by the Governor. He insisted, that according to the act under which the interest money was raised, such money could only be appropriated to the support of government, and that he was ordered by his Majesty, not to pass any law whereby his revenue might be impaired or lessened, without his Majesty's special permission. His Excellency therefore caused a bill to be drawn and to be submitted to the House, in which it was said, "the same ends are proposed," but which was so expressed as to save the claim of the Governor in relation to the disposal of the revenues. But the bill submitted to them was rejected by the Assembly, and they declared, that they conceived the bill they had passed, was "sufficiently worded to answer the ends proposed by it."⁶

The attempts of the Assembly to procure the passage of the several bills which were deemed important to the interests of the province, were continued at every session; and an inclination was shown to make the passage of these enactments, a condition of the support of government. In 1741, though the amount before granted was given to the Governor, and some increase was made in the allowance to other officers, the provision was limited to the period of one year. In 1742, a bill was introduced for the support of government, to which a clause was attached "for ascertaining the fees to be taken by the several officers therein." By a vote of the House, in committee of the whole, this clause was finally stricken from the bill, and the support was given without any condition. Yet the attempt was significant, and the rejection of the clause was supposed to be owing, in part, to a fear that the House might be dissolved by the Governor, rather than to a change of opinion upon the subject. These measures were strongly reprobated by the Governor: he not only refused his assent to the bills that were presented, but resolved upon dissolv-

⁶ The Colonial Governors constantly endeavoured to hold the public revenue under their special direction, whilst the Assemblies sought to extend *their* control

ing the House. In an address at the time he stated, that the acts which were offered for his approval were the same in substance with those which had formerly been disallowed by his Majesty, and that he had been specially instructed not to re-enact any law to which the assent of the King or his predecessors had once been refused, without express leave for that purpose first obtained. "With what view," he said, "my assent was desired to acts disallowed by his Majesty, and that even without a suspending clause according to the instructions well known to you, unless it was to expose me to just censure for giving such assent, I leave to be determined by all indifferent persons. I hope my not assenting to laws I am not empowered to assent to, will not be called a fault, but on the contrary, a strict adherence to duty, which by God's assistance, nothing shall intimidate me from doing. And what was the intent of those strong endeavours to annex a fee bill to the bill for the support of government, (a bill to which you would never suffer an amendment to be made,) unless it was to force the passage of the fee bill without any amendment? It is true, the attempt did not succeed, and I thank you for what is done for the support of the government, (though not sufficient,) but it may not be unworthy of your notice to observe, that this fee bill, whatever title or form you may give it, if it be of the same nature of that which has twice been repealed, it will not be difficult to say what will be the success of it, or the sentiments of his Majesty's Ministers concerning it."

The decisive tone of the Governor did not prevent the Assembly from a renewal of their efforts. The next Legislature declared that they supposed his Excellency had been commissioned for the welfare of the province, and that they should proceed to lay such laws before him as they thought might revive it from its sinking and distressed condition; and that his assent to these, *previous to the passing a bill for the support of government*, would be regarded as a demonstration of his Excellency's good inclinations toward the people.¹ The Governor replied that "the passing of

¹ The acts particularly desired at this time, related to the regulation of fees, to the limitation of actions in the Supreme Court, to the registering of deeds and other conveyances in the counties, and to securities to be given by Sheriffs

laws, previous or posterior, to your passing a bill for the support of government, seems to me not very material; nor do I think that your passing a bill for the support of government, is a sufficient reason for me to give my assent to a bill that I do not think reasonable in itself; or that your not passing such a bill, is a sufficient reason for me to deny my assent to a bill I think to be so." Some of the measures of the Assembly, however, were acceded to, bills were passed which received the assent of the Council and of the Governor, concerning the acknowledgement of deeds, and for ascertaining the fees to be taken by the several officers of the colony. But in relation to the latter, a new difficulty arose; the bill was passed with a clause suspending its operation until the pleasure of his Majesty should be known; but the Assembly, with a sort of impatience for the enjoyment of that which they conceived to be sanctioned by justice, and which was allowed by a law of the province, resolved, that the act should be immediately published and applied.* This course was strenuously resisted by the Governor; he demanded to know of the Assembly, by what authority they ordered an act not in force, to be printed as a rule for the government of the people. The Assembly replied, that they had not assumed any unwarrantable authority; that they only gave an opinion of an act which had passed the three branches of the Legislature, and that they did not think themselves accountable to

for the faithful fulfilment of their duties, and for limiting the period of their service. The latter had become necessary on account of the incautious or interested appointments made by the executive. All these would have been highly advantageous to the public interest, and the only ground of objection was, that they were calculated to lessen the influence and power of the principal officers of the province. The desire of his Majesty, in which the Governor appeared to participate, to retain the people in strict dependence, and make the province a profitable field for office, excited much discontent, and led the Assembly to measures which in some instances, may not have been the most prudent or proper.

* A resolution was adopted "that the act for ascertaining fees passed by the Governor, Council, and General Assembly, as it has the approbation of the three branches of the Legislature here, ought to have due weight with the judges and all others concerned, and that they ought to take the said act for their rule to govern themselves by, until his Majesty's pleasure should be known, and that the said act be made public for the purpose aforesaid."

any for their opinion; and that it would not be consistent with the dignity of the House, and the trust reposed in them, to give a further reply. But with this reply his Excellency was by no means satisfied, and his opposition was carried to an extent, that was not to be reconciled with his previous assent to the act. He represented to his Majesty, that it would operate to the injury of the province, the fees allowed therein being so much reduced that persons of character or capacity would not accept of offices in the several courts. The King's refusal of the bill was only delayed for a time, through the efforts of the agent of the province in England, and finally it was disallowed by his Majesty.

Another measure which was deemed important to the interests of the province, was an act for a new emission of bills of credit. The issue of these bills by loans, had been found to be advantageous to the people, and the interest accruing thereon had served for the support of the government. But the parent country was ever watchful that the interests of the colonists should be kept subordinate to its own, and a bill had been introduced into Parliament to prevent the issuing of paper bills of credit in the colonies, to be a legal tender in payments; under the pretence that such issues were injurious to English commerce.⁹ This bill was pending in Parliament. During this time an act was passed by the Assembly for making current forty thousand pounds in bills of credit, but with a clause suspending the operation until his Majesty's pleasure should be known. But the act was rejected by the Council on account of the pending prohibition in Parliament.¹⁰

⁹ A copy of this bill being laid before the Assembly, (in November, 1744,) they resolved that it was the opinion of the House that "if the said bill, or any of that tendency, should pass into a law, it would not only be an encroachment upon the fundamental constitution of this province, and the concessions made to the first settlers thereof, by his Majesty's royal ancestors, but also destructive of the liberties and properties of his Majesty's subjects now inhabitants of the colony, as also a great discouragement to the further settlement and peopling thereof, which must be vastly detrimental to the trade of Great Britain by lessening the consumption of manufactures."

¹⁰ It ought to be stated, that although the principal ground of the rejection of the act for the issue of bills, was the action that had been taken by Parliament,

* the Council objected to the plan itself. They said that the raising of money

There is reason to believe that injury to "English commerce was not more apprehended than the independence of the Colonial Assemblies. The interest arising upon bills of credit, though generally appropriated to the support of government, was not, in the original acts specifically applied, and therefore was subject to the disposal of the House. Could the amount have been limited so as merely to meet the existing wants of the government, and a specific appropriation of the amount to the payment of salaries have been secured, so as to render the officers of government independent of the Assemblies, other objections to these issues might possibly have been waived. Notwithstanding the threatened prohibition of Parliament, Governor Morris stated, that if the bill had contained a *certain indisputable provision* for the support of government, "had a sufficient sum been appropriated to the building of a house and conveniences for the residence of the Governor and places and houses for the sitting of the Council and Assembly. I don't know how far I might have been induced to assent to it, but as none of these things are done or intended, I neither can assent to it myself, or recommend it to his Majesty."

The meeting of the Assembly was brought to a close by a new disagreement. At this period concealed hostilities had been carried on for some time between England and France, and an open rupture was continually threatened. During the course of the sitting, the Governor informed the House that his Majesty's declaration of war was made public, and that a necessity existed for putting the province in a state of defence. He recommended that a law should be passed for the better regulation of the militia, and stated that there had been much remissness on the part of officers in attending to their duties. The Assembly afterwards replied, that upon careful consideration of the militia law of the province, they were of opinion, that it made sufficient provision to enable the Governor to give such assistance as the colony could furnish,

in this way, for the public use, was unequal and unreasonable, and fatal to the interests of the people in general, and to the merchant and trader in particular; that the rich, who ought to contribute most to the public expense, gave nothing, whilst the distressed, and people in debt, sustained the whole load; and that a paper currency was fluctuating, credit being lowest, when the greatest sums of such money were issued.

and that for any neglect of their duties, the officers were answerable to the Governor himself. But they said they should always be ready to do their duty in providing means to defray the expense that might be incurred in raising the forces. To a more urgent communication from the Governor representing the necessity of new provisions, a similar reply was returned. An act embracing the particulars which his Excellency supposed to be required, was then prepared and passed by the Council and sent to the Assembly; but the House declined to act upon the bill, and prayed the Governor to grant them a recess. A recess was not granted, but a dissolution was ordered. His Excellency said, that he had endeavoured to show that it was necessary to make some provisions for the defence of the country, and that the Council, sensible of the danger, had prepared a bill which had been sent to the House, but which they had ordered to lie upon the table, a proceeding which was contrary to the duty of the House, and of ill consequence to the public. "So far from showing any loyalty to the Sovereign," he said, "it shows the contrary, as well as a firm resolution not to make any provision for defence, and a want of affection for their fellow subjects."

By the next Assembly, which convened in August, 1744, the course of the former one was fully pursued. They agreed upon a report concerning the state of public affairs in the colony. In this they represented the many endeavours that had been used to form and obtain enactments that were required for the good of the colony, and the opposition that had been made by the Governor, and by the Council.¹¹ They complained also of the improper union of offices in the same person, especially, that the Chief Justice should serve at the same time as member of the Council, by which means the distinction between the legislative and judicial duties and powers was destroyed.¹²

¹¹ The Council had rejected the acts for issuing bills of credit; that to oblige Sheriffs to give security and to limit the term of their office; and that for renewing an act to prevent actions under fifteen pounds from being brought into the Supreme Court.

¹² The son of the Governor, was Chief Justice of the province, and also one of the Council; and the Assembly illustrated the effect of such an union, by showing its operation in certain cases; that as a member of Council, the individual

The Council defended the measures and the policy complained of by the House. They set forth the reasons by which they had been influenced in rejecting the several bills, and declared in formal resolve, that they had an undoubted right to reject any bill at any stage of its progress, and that to censure them for so doing was an attempt to alter the constitution. They also resolved that it was his Majesty's undoubted right and prerogative to assign different places to the same person, and that the duties to be performed by the Chief Justice and a member of the Council, were in no wise incompatible.¹³

At length the division between the branches of government became such as to cause a serious obstruction to the course of public affairs. The acts demanded by the Assembly being rejected, the grants for the support of the government were greatly reduced, and finally were entirely withheld. A period of nearly two years was passed in various attempts to effect a compromise of interests and views; but the entire contrariety of aims, and the mutual distrust of the parties, prevented an accommodation, and the death of the Governor which took place in May, 1746, put an end to further endeavours.

The administration of Governor Morris entirely disappointed the expectations that had been formed from his previous course, and it was scarcely more fortunate for himself, than for the province. It subjected him to reproachful imputations, and changed the feeling of gratitude that had formerly existed toward him, into

might prevent the passage of such an act as that to limit actions in the Supreme Court, because as a member of the court, he might be desirous to extend the jurisdiction of that court; and it seems to have been supposed that such had been the case at the present period. It was also stated, that as causes might be taken from the Supreme Court, to be tried before the Governor and Council, the same person would still sit as judge, and thus the objects of a removal might be defeated.

The example stated by the Assembly as to the inconsistency of the two offices, was noticed *in part* by stating, that a member of Council was precluded by a positive regulation from reviewing a case which he had before decided upon as a Judge. To this the Assembly replied, that if such was the case, it had not before been so well understood; they also said, that they had not denied the prerogative of the Crown, or the rights of the Council, but only the modes in which these powers and rights had been exercised.

one of resentment. Perhaps his change of position was not sufficiently considered; and such a change should mostly be avoided by those who are careful of peace or reputation. It is certain, however, that in the discharge of his office, he manifested a disposition rather to uphold the arbitrary pretensions and demands of the Crown, than to favor and defend the interests of the colonists.¹⁴

Upon the death of Governor Morris, the administration of government devolved on John Hamilton, Esq., the eldest member of Council. Though the war which existed between England and France had arisen chiefly on account of occurrences in Europe, it extended in no long time, to the American colonies belonging to the respective parties. The national jealousy of the colonists had been sharpened by an active competition in trade, and particularly in endeavours to command the fisheries on the coast. This trade was of the greatest importance, and the attempts of the French, after the commencement of the war, to acquire possession of some of the principal stations, alarmed and aroused the English colonists.

In 1745, an expedition was projected by Governor Shirley, of Massachusetts, for the reduction of the settlements of the French at Cape Breton, and especially, for the conquest of Louisburg, the capital. Commodore Warren, the English commandant on the coast, declined to concur in the attempt, without express directions from the Ministry. But an armament was prepared through the steady exertions of Shirley, and was placed in the command of Pepperel, an eminent merchant, and a Colonel of the Massachusetts militia. The squadron set sail, and *afterwards* was joined by the English forces. The undertaking was entirely successful; after a siege of two months, Louisburg was reduced, and was surrendered to the English Crown.¹⁵ Encouraged by this success,

¹⁴ Among other points of his administration, the question of a new county should be mentioned. It was established in March, 1768-9. It was taken from Hunterdon, and received the name of the Governor, being called Morris.

¹⁵ The capture of Louisburg was strictly American, and in fact, a New England enterprise. The plan was laid before the Legislature of New Jersey, but the House declined to concur in the attempt at the time, being entirely destitute of vessels, and doubting the propriety of proceeding without the approval of the King. But upon being informed that Louisburg was actually besieged,

an extensive plan was formed by the English Ministry, at the instance of the colonists, for the reduction of the whole of the French possessions in America. Instructions were given to the several Colonial Governors, directing the mode to be pursued in furnishing men and supplies. In July, 1746, these instructions were laid before the Legislature of New Jersey by the acting Governor, Hamilton; and an enactment was passed to encourage the enlistment of five hundred men, and to provide for their subsistence and transportation. The amount of interest in the treasury was appropriated to the purpose, and an issue of ten thousand pounds in bills of credit was ordered. The Assembly declared that they were "heartily desirous to do all in their power in support of his Majesty's interest." A similar disposition was shown by the rest of the colonies. But the event of this movement was by no means answerable to the extent of preparation. The measures of the British Ministry were so tardily and feebly pursued, as almost to warrant the suspicion that no anxiety was felt to relieve the colonists from the dangers with which they were threatened.¹⁰ The pacific proceedings that followed were of a similar character. By the "inglorious" treaty of Aix la Chapelle, which was concluded in 1748, the principal advantage already secured was relinquished, and no one of the grounds of dispute or complaint was fully removed. Louisburg was surrendered to its former possessors; the right of English vessels to immunity from search and detention, which had been a principal cause of difficulty between England and Spain, was scarcely noticed in the treaty; and the limits of the respective colonial possessions of England and France, in America, remained unsettled, to be determined at a future period by a resort to arms.

and with his Majesty's approval, the House unanimously voted that two thousand pounds of the interest money then in the treasury should be transmitted in provisions, to the American forces.

¹⁰ Some American politicians believed that the British Ministers had become jealous of the daring and enterprising character of the colonists, and were secretly not averse to the continuance of the restraint which the neighbourhood of the French imposed. The conduct of the Ministry at this time gave some reason for such a belief, and but for the change that afterwards occurred, the opinions of the few, would no doubt have been generally adopted, and would have given rise to much dissatisfaction in the colonies.

At the demise of President Hamilton, in 1747, the administration of government in New Jersey devolved on John Reading, Esq., the next eldest Councillor, but very soon afterwards, a commission was given to Jonathan Belcher, Esq., appointing him Governor of the province. The conduct of this officer was prudent and conciliating; and calculated to compose the differences which had formerly existed. He seldom opposed the measures of the Assembly, except when acting under positive instructions from his Majesty. During his administration, several of the laws which had been rejected in the time of Governor Morris, were allowed, and others which had been enacted for a limited period, were renewed and continued. The law for limiting actions in the Supreme Court was re-enacted, and another was passed for the regulation of fees.¹⁷ In the latter, the amount was prescribed to be taken in specified cases, by the Governor, by Justices, and other officers of courts, by Juries, Lawyers, and witnesses, and by all persons engaged in the services of the Assembly, or in the offices of record. This act was confirmed by the Royal assent. Whilst the concessions just mentioned had tended to unite the branches of the government, and bring them into nearer union, other circumstances arose, to disturb the quiet of the province. The ancient dispute concerning the titles of land, which at earlier periods had been the cause of so much confusion and strife, was once more revived. Large portions of land were held which had been acquired by irregular purchases from the Indians, in disregard of proprietary rights; and the claimants under the laws of the province had not been able to recover the property, or to compel the payment of quit rents. But at this period the proprietary titles to extensive portions of land, fell into the hands of individuals who were possessed of authority and influence, and who were disposed to enforce their claims.¹⁸ Writs of ejectments were issued, and suits for the recovery of quit rent were commenced against many of the settlers. The defendants, forming a large portion of the population of some of the counties associated

¹⁷ Allinson's Laws, p. 159.

¹⁸ These persons were Robert Hunter Morris, the Chief Justice, James Alexander, the Secretary of the province, with other prominent individuals.

together, and resolved, that whatever might be the decision of law, they would maintain their possession. Individuals who had been decided against in the courts and committed to prison, were released by force. For a time the laws became powerless. The Governor and Council viewing the proceedings as most serious offences, not only endeavoured to sustain the courts in the administration of existing laws, but recommended to the Assembly the passage of an act with most rigid provisions, for the prevention of all assemblages that should appear of a riotous character. But this recommendation was not acceded to; the Assembly apparent regarding the case as not of so aggravated a nature, or supposing that other and milder measures would be more effectual. Memorials and counter memorials upon the subject were presented to the King. The Council of Proprietors, whose interest it was to sustain the proprietary claims, represented to his Majesty, that the people had combined together to subvert the government, that they had refused to submit to the laws, and had erected pretended courts of justice for themselves, and that the Assembly refused to grant the necessary aid to enable the executive officers to maintain their authority. The Assembly set forth, that the original divisions and sales of land had been so made as to give rise to opposing claims; that the present parties were a number of poor people on the one part, and some of the rich, understanding, and powerful on the other; and that the latter were harassing the people by a multiplicity of suits, which had excited general uneasiness, and threatened to be productive of the greatest distress, and the more so as most of the officers of the province were supposed to be connected with the claimants in the suits. These representations of the Assembly had but slight bearing upon the matter really in issue. It is not improbable that the claimants in the cases in question were disposed to urge their advantages with but little forbearance; yet the opposers of the proprietary rights were known to have acquired their claims, and to have continued in the enjoyment of property by a violation of law, and if they suffered in consequence, it could only be regarded as the result of an improper and unauthorized proceeding. In any case, their forcible resistance of law in mere anticipation of injustice, was wholly indefensible. Yet to a great extent, the object of the in-

urgents was attained. Their combination enabled them to put defiance the civil authorities, and the sympathies of the Assembly deferred a resort to the military arm. By this temporising policy, the strict demands of justice were sacrificed, but peace was reserved. Some of the rioters became sensible, if not of the impropriety of their course, at least of the danger they incurred, and petitioned for pardon; others refrained from open opposition to the public authorities, but continued to retain their private possessions. Two acts were finally passed by the Assembly which terminated the protracted dispute. One of these was an act to pardon persons who had been guilty of riot. It prescribed that some of these persons, conscious of their guilt, had presented petitions to the House praying their supplication with the Governor on behalf of the offenders, a free pardon was "hereby" granted to them. The other act provided for the suppression and prevention of riots, tumults, and disorder in the province.

A difficulty of another description occurred at this period. It arose in relation to a bill to determine the value of taxable property in the several counties, for the purpose of apportioning their respective quotas. The bill prepared by the Assembly, included all profitable tracts of land held by patent, deed, or survey, whereon any improvement was made. This was objected to by the Council. They urged that it was contrary to the royal instructions which prohibited any tax upon unprofitable lands, and that the restriction or definition of the bill, limiting its operation to lands whereon an improvement was made, was so vague and uncertain, that large portions of lands might be included that were wholly unproductive. But the Assembly adhered to their bill. It was probably their object, at a time when the resources of the province were limited, and some of the usual means of relief had been denied, to reach a portion of the lands that had hitherto been exempted from taxation under the general provisions of the royal instructions. The Council, as executive officers, were disposed to maintain these instructions in their fullest extent; and it was also suspected that as large proprietors themselves, some of the body were directly interested in opposing an extension of taxation on land. Neither party would yield, and as an assent to the "Quota Bill" was demanded by the Assembly as a preliminary to any grant for support, the

officers of government were left for nearly three years without any compensation. Governor Belcher at length dissolved the Assembly. The new House, which met in May, 1751, was desirous to remove the difficulty. A new bill was formed, in which lands were classified with a view to their quality, and all that could with any propriety and justice be deemed profitable, were made liable to taxation, at a rate depending on their class.

Among the occurrences of this period of Governor Belcher's administration, the erection of two new counties may be noticed. One was established by an act passed on the 19th of January, 1747. It was taken from the southern portion of Salem county, and was called Cumberland.¹⁹ The choice of members to the Assembly was suspended until the pleasure of the King should be known, the freeholders continuing to vote with Salem. The other was established by an act passed on the 8th of June, 1753. It was taken from Morris county, and was called Sussex. As in similar cases, the right of electing members to the General Assembly was withheld for the time.

The treaty of Aix la Chapelle, already noticed, had been formed upon such a basis that it could scarcely prove to be permanent. Nearly all the former differences continued to exist, and no change whatever was made in relation to the American claims of the contracting powers. France asserted a right on the north, to all Canada, which country had been erected into a province called New France, at the head of which was a Governor, appointed by the King. On the south, the same nation advanced a claim to an immense region which had also been erected into a province called Louisiana.²⁰ They also claimed to have traced the Ohio River, and this stream they represented as the natural communication between their provinces on the north and south, and the whole of the country watered by this stream, as well as other streams falling into the Mississippi, was claimed by them. Great Britain on the contrary, claimed as far north as the St. Lawrence, and

¹⁹ The name was given by Governor Belcher, in honor of the Duke of Cumberland.

²⁰ The original claim of France to Canada was founded on the discoveries of Cartier. The title to Louisiana was founded on the discovery of the River Mississippi, by De la Salle in 1683.

the great lakes, and from the Atlantic to the Pacific. To maintain their pretensions, the French had projected a vast line of forts; and posts were already established upon the lakes, and one on the River Le Beuff, not far from the Ohio. In their advances, they either treated with, or attacked and subdued the native tribes who were in alliance with the English, and threats or remonstrances were sent to arrest the progress of an American company who were attempting to establish a settlement.²¹ These movements could not but excite attention, and Governor Dinwiddie, of Virginia, resolved upon dispatching a messenger for the purpose of learning the designs of the French, and to convey a declaration of the English claim to the country. This messenger was George Washington. He left the frontier with a number of attendants in November, 1753. After a long and hazardous journey, he reached the post on the Le Beuff, and was received with civility by St. Peirre, the Commandant. To the request from the Governor of Virginia, that he would leave the country belonging to the English, the Frenchman only replied, that he was there by orders from the Marquis du Quesne, the Governor of Canada, whose directions he should obey, and to whom all further questions concerning a right to the country, were referred. This answer, together with other information he had acquired, was reported by Washington. The British Ministry were apprised of the movements of the French, and a representation upon the subject was made to the Court of Versailles. But the professions of that court, and the directions that were given to the Governor of Canada, to refrain from any aggression, were professions designed to amuse, as the same course of proceeding was afterwards continued; and the English Ministry, foreseeing the issue, gave instructions and authority to the Colonial Governors to resist and repel encroachments. Measures were also taken to secure the fidelity and aid of the six nations of Indians who were in alliance

²¹In 1750, a number of persons, mostly from Virginia, of whom George Washington was one, possessed an act of the House of Burgesses, constituting them into a body under the name of the Ohio Company, and granted to them six hundred thousand acres of land upon great the Ohio River. They caused the land to be surveyed, and opened a road into the interior and were making preparations for a settlement at the time of the arrival of the French.

with the English, and under their protection. In September, 1753, instructions were sent by the board of trade to the Governor of New York, to hold a meeting and treat with the six nations; to hear and redress their complaints, and to gratify their wishes in other particulars; and instructions were transmitted to the other colonies to send commissioners to this meeting, and to unite with New York, in order that all the provinces might be comprised in one general treaty, to be concluded in his Majesty's name. The instructions of his Majesty were placed before the Assembly of New Jersey in April, 1754. But New Jersey had not been directly concerned in the Indian trade, or a party in Indian treaties; and the Assembly declined a direct concurrence in the contemplated measure. But they expressed a willingness to contribute their assistance, and to join with other colonies in resisting the encroachments of the French. This decision was adhered to, notwithstanding urgent representations from the Governor to induce a compliance with his Majesty's directions. In consequence, New Jersey was not represented in the meeting of colonies. The commissioners appointed in other colonies convened in June, 1754, at Albany, in the province of New York.²² The treaty with the Indians being concluded, another object was presented to notice. A communication had been received from the Earl of Holderness, the English Secretary of State, recommending that there should be formed at this meeting, a general plan of union among the colonies, for mutual aid and defence. The commissioners were sensible of the importance of the object; they perceived that effectual resistance against the designs of the French could only be made by means of a general combination. They therefore resolved "that an union of the colonies was absolutely necessary for their preservation." Of the several plans of union that were presented to the body, that proposed by Dr. Franklin, of the Pennsylvania delegation, was preferred, and was, as to its principal features, finally adopted.²³ This scheme was agreed to

²² There were Commissioners from Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Pennsylvania, and Maryland.

Pitkin's United States, vol. 1, p. 142.

²³ This plan provided, that with the assent of the Parliament, a general go-

by all the commissioners except those from Connecticut; they refused their assent on account of the extensive powers that were given to the President General. Copies of the plan were transmitted to the King, and to each of the colonies. But it was rejected both in England and in America; in the former, because it

government should be formed in America, embracing the whole of the colonies; but that under this general government each separate colony should retain its own constitution, excepting only such changes as might be rendered necessary in the new relation. The general government was to be administered by a President General, to be appointed by the Crown, and a Grand Council chosen by the Representatives of the people in the Colonial Assemblies. The members chosen from any of the colonies not to be less than two, or more than seven. In the first apportionment, Massachusetts was to have seven, New Hampshire two, Connecticut five, Rhode Island two, New York four, New Jersey three, Pennsylvania six, Maryland four, Virginia seven, North Carolina four, and South Carolina four. Afterwards, the members were to be apportioned according to the monies paid into the general treasury by each colony. The Grand Council were to meet once every year, or oftener, if called by the President General, with the consent of seven of the members. The President General was to have a negative on all laws, and to superintend the execution of the laws. The President General and Grand Council were to have the regulation of all affairs with the Indians, to direct in making new settlements on lands purchased of the Indians, if not within the bounds of particular colonies, (or not within their bounds when some of them should be reduced to more convenient dimensions,) and to make laws for the government of such settlements. The President and Grand Council were to have power to raise and maintain a military force, build ships and forts, equip vessels to guard the coasts, and protect the trade on the ocean, lakes, or great rivers, but no men were to be impressed in any colony, without the consent of the Legislature thereof. For the purposes above mentioned, the President and Council were to have power to make laws, lay and levy such general duties, imposts, or taxes, as should appear most equal and just; to appoint a Treasurer General, and a particular Treasurer in each government, but no money to be drawn but by the joint order of the President and Council. Twenty-five members, being one or more from each of the colonies, should form a quorum of the Council. The laws that should be enacted were not to be repugnant to the laws of England, and must be transmitted to the King for his approval, and if not disapproved within three years, were to remain in force. On the death of the President General, the Speaker of the Grand Council, for the time being, should succeed to the office until the pleasure of the King should be known. All military and naval officers to be nominated by the President and approved by the Council, all *civil* officers to be nominated by the Council and approved by the President, and in case of vacancy by death or removal of

left too much power with the colonists, in the latter, because it gave too much to the Crown. By the Assembly of New Jersey it was immediately rejected, and the House transmitted instructions to the agent of the colony in England, to oppose all endeavours for its ratification there. The plan was regarded by the House as likely to be injurious to all parties, "that it might be prejudicial to the prerogative of the Crown *and* to the liberties of the people."

After the rejection in England of the American plan of union, a different one was proposed by the British Ministry. But if this scheme was free from some of the objections which had caused the former one to be rejected in the colonies, it contained others still more opposed to popular rights. It provided that the Governors of all the colonies, with one or more of their Council, should assemble and devise measures for the common defence; that they should erect forts where they should think proper, and give orders for raising such forces as might be deemed necessary; and have power to draw on the treasury of Great Britain for the sums required for these purposes, the whole amount to be afterwards reimbursed *by a tax laid on the colonists by act of Parliament*. The Ministerial project was communicated to several of the Colonial Governors, but it met with no favor, and was dropped without the formality of a distinct rejection.⁷⁷ During this period

any office, civil or military, the Governor of the province in which the vacancy happened, to appoint a successor until the pleasure of the President and Council should be known. In particular emergencies, each colony might act in its own defence, and the expense incurred thereby should be paid by the general government if judged to be just and reasonable.

The Ministerial plan excited particular attention from Governor Stacey, of Massachusetts, who is supposed to have remitted it with favor. But it was transmitted to him, in December, 1774, to Dr. Franklin, who was then at Boston, for his opinion. A long and most able reply was given by Franklin; he presented the objections against such a scheme with the greatest clearness and force; he urged, amongst other reasons, that it was supposed to be the declared right of Englishmen not to be taxed but by their own consent given through their Representatives; and the compelling the colonists to pay taxes without their consent, would be rather like raising contributions in an enemy's country, than taxing Englishmen for the public benefit. If Franklin had somewhat misapprehended the views of his countrymen in forming the Albany plan,

French had continued their attempts to establish themselves in the country upon the Ohio, and a strong work was erected at the junction of the Allegany and Monongehala Rivers. It was perceived by the colonists that their claims to the country must either be abandoned, or that resistance must be made. The latter was resolved to, under the general authority that had been given by the English King, to oppose and repel encroachments. Accordingly, a company of men was raised in Virginia, and in April, 1754, they advanced under the command of Lieutenant Colonel Washington, towards the posts of the French. Hostilities soon ensued; and war thus commenced, was continued from that period. Yet an actual declaration of war was not made for nearly two years later; hence this has been called the war of 1756. In the long contest that followed, the American colonies bore a full share. In times of peace, the several colonial establishments were carried on by means of regulations made by the respective governments; the general direction of warlike operations being assumed by the Crown, requisitions for men and money were made upon the colonies, and apportioned among them according to population and wealth. The requisitions at this time made, were mostly successfully met. The Assembly of New Jersey, as well indeed as other similar bodies, continued to maintain their privileges; they claimed the right to exercise discretion, and in some instances discretion was followed, yet no disposition was manifested to escape from reasonable demands.

For a period after the commencement of the war, disaster attended the British arms. Braddock failed and fell on the Ohio; they, after a tedious and painful advance, effected nothing on Niagara; and the partial and unimproved success of Johnson in the vicinity of Crown Point, was insufficient to dispel the general gloom. In many of the colonies the greatest distress was experienced, not only on account of the exertions and deprivations

succeeded in persuading and explaining their opinions in his notice of the ministerial scheme. Yet Franklin seems to have retained a partiality for his work, and afterwards said, "that the different and contrary reasons of dissent may plausibly be supposed that it was really the true medium, and I am of opinion it would have been happy for both sides, if it had been adopted."

Memoirs, part 2.

incident to the state of affairs, but from the frequent incursions of the French and their savage confederates. The latter, encouraged by the successes of the French, had broken from their English connexions, and now swept over the country, and committed the most atrocious depredations and cruelties. But at length, under the vigorous administration of the celebrated Pitt, an entire alteration took place. The British arms became triumphant, and after the battle on the plains of Abraham, in September, 1759, and the consequent surrender of Quebec, the power of France in America was nearly prostrated. Negotiations for peace soon followed, but these not being successful, a "family compact" was entered into between France and Spain, to oppose the growing pretensions and power of the English.²⁵ The union of these powers was a means of prolonging the contest for a time. This indeed had been foreseen by Pitt, and he had urged upon the Cabinet the necessity of forestalling the effect, by an early attack upon Spain. But a new King of narrow capacity and a determined temper, had come to the throne, and a portion of the Cabinet were jealous of the power and influence which the principal Minister had held and wielded.²⁶ Pitt was overruled, and he, resolving not to be responsible for movements he could no longer direct, resigned his employments and place. But a powerful impulse had been given to the course of affairs, and the new Minister had sufficient wisdom to follow in the track that had already been opened, and Great Britain, by the aid of her colonies, rose superior to the united power of the Bourbons. In 1762, Havanna, the capital of Cuba, and the strong hold of Spanish America, surrendered to the English, and other places of strength were also reduced. These continued successes gave rise to dispositions favourable to peace. France and

* In this agreement between France and Spain, which was concluded on the 15th of August, 1761, it was declared that the two Crowns would consider as their common enemy every power that should become such to either, and that whoever attacked one Crown, attacked also the other. It was also agreed that when they should terminate by peace, the war they had supported in common, they would balance the advantages that one might have gained, against the losses of the other.

— Upon the death of George the Second, in October, 1760, George the Third ascended the Throne.

Spain were dispirited, and England was less desirous of farther conquest, than for relief from the embarrassments caused by the debts incurred in the war. Preliminaries for a treaty of peace were agreed to, and signed on the 3d of November, 1762, and the articles were finally ratified and confirmed at Paris in February, 1763.

By this treaty, Nova Scotia, Canada, and all their dependencies were ceded to Great Britain, and a line was agreed upon between the dominions of his Britanic Majesty, and those of his most Christian Majesty, drawn along the middle of the River Mississippi, from its source, to the River Iberville, and from thence by a line drawn along the middle of the River and the Lakes Maurepas and Pontchartrain, to the sea; and his most Christian Majesty ceded in full right and guaranteed to his Britanic Majesty the river and port of Mobile, and every thing he possessed or ought to possess, on the left side of the River Mississippi, except the town of New Orleans and the island on which it is situated, which were reserved to France. To secure the restoration of Havana, the King of Spain was obliged to yield to Great Britain, Florida, St. Augustine, the Bay of Pensacola, and all her possessions to the east and south-east of the Mississippi. To compensate Spain for the loss of Florida, and thus to "balance" advantages and losses, France, by a secret article, ceded Louisiana to his most Catholic Majesty.

The design of France to confine the English colonists to a narrow strip of coast, or perhaps to subjugate them entirely, was thus completely defeated. The entire command of the country to the east of the Mississippi, was secured by the English, and Canada was added to their possessions. But these advantages had not been easily or cheaply obtained. "There had been a great expenditure of treasure and of life. The colonists had generally kept in the field a force of twenty thousand men, and had contributed more than three millions of pounds.* New Jersey had raised at different periods, near three hundred thousand pounds, and for a great part of the time had maintained a force of five thousand men, beside particular bodies for special services.

* Of this sum the British Parliament reimbursed at different times, one million of pounds.

Several changes had occurred during this period in the government of New Jersey. At the death of Governor Belcher, which occurred in August, 1757, the administration again devolved upon John Reading, who continued in office until he was superseded, June, 1758, by the arrival of Francis Bernard, Esq.²⁸ Governor Bernard performed important services in effecting a pacification with the Indian tribes. In 1760, he was transferred to the government of Massachusetts, and was succeeded by Thomas Boon, who, in about one year, was also transferred, being removed to South Carolina. Josiah Hardy, Esq., was the next in succession; his period of service was likewise but brief; being appointed soon afterwards to the Consulate at Cadiz. In September, 1762, a commission was given to William Franklin, Esq. He was the son of Dr. Benjamin Franklin. He had served as a captain in the late war, and afterwards had accompanied his father to England. He owed his appointment to the influence of Lord Bute.

* President Reading at first refused to enter upon office, on account of his age and infirmities, which he said rendered "the administration too burdensome for me cheerfully to undertake." But he finally consented.

* The appointment of Franklin as Governor, was the cause of some surprise at the time, his fitness for the place being strongly questioned.

See Life of Lord Sterling, p. 69.

CHAPTER XVIII.

OPINIONS RELATING TO THE RIGHTS OF THE COLONIES.—PASSAGE OF THE STAMP ACT.—OPPOSITION TO THE STAMP ACT.—THE REPEAL.

THE long contest that had been carried on by England and her American colonies against a common enemy, had served, for the time, to bring them into closer union both of interest and of feeling. The sympathies that arose from a common extraction, had been strengthened by a participation in danger, and afterwards in triumph. The Assembly of New Jersey declared, at the conclusion of the war, that "ages to come will rejoice in the happy event, and we trust the recompense to our mother country will prove an ill-return of wealth and gratitude, in a manner not now easily foreseen." But the concord that had thus arisen was not destined to be of long duration. At no early period differences of opinion began to be manifested as to the relative condition and claims of the colonies. These differences indeed had long existed, but no marked occasion had occurred for their general exhibition. The colonial governments had been established at different times and in different modes; there were provincial, proprietary, and charter governments. In some of these the dependence of the people upon the Crown was closer than in others; but whatever might be the particular character of their institutions, the colonists claimed to be entitled to all the privileges which belonged to other subjects of Great Britain. They claimed, first, in the new and distant country in which they were placed, they had lost none of the rights and immunities that were enjoyed by residents and natives born subjects in the ancient realm. The limitations upon authority, which existed and were in force in the mother country, were supposed also to be in force in the provinces. In the maintenance of these claims, important questions arose from time to time for consideration and discussion, among the most important of these were those relat-

ing to representation and taxation. It was one of the vital principles of the English constitution, that the people should be free from all taxation, except such as they had assented to, either directly, or by the representatives they had chosen. In the government of England, representation and taxation were regarded as inseparable. The colonists claimed that this immunity belonged to them as fully as to any other subjects; that *Americans* could not be taxed but by their own consent. This claim had been advanced at the earliest periods, and had been constantly maintained.¹ They also declared that they were not, and from their local situation could not be represented in the British Parliament, and therefore, that they could not be taxed by that body; that the authority of Parliament in this respect was entirely inoperative in the provinces; and this doctrine seemed to be supported not only by justice, but also by the general scope of provincial government. There was not, except in one instance, any thing to give color to an exercise of Parliamentary authority in the colonies for the purpose of taxation. The original charter of Pennsylvania contained a provision that the Crown should levy no tax, or custom upon the inhabitants, or their goods unless by the consent of the proprietary or the Assembly, "or by

¹ So early as 1636, the Assembly of Plymouth declared that "no act, imposition, law, or ordinance be made or imposed upon us *at present or to come*, but such as has, or shall be enacted by the consent of the body of freemen or the Representatives legally assembled; which is according to the free liberties of the free born people of England." In 1650, when the constitution of Maryland was settled, the Legislature enacted, that no taxes should be assessed or levied on the freemen of the province without their own consent, or that of their deputies. In 1661, the General Court of Massachusetts made a similar declaration, and very soon afterwards Rhode Island adopted, on her own behalf, the words of Magna Charta, that "no tallage, or custom, loan, or benevolence, gift, excise, duty, or imposition whatsoever, be laid, assessed, imposed, levied, or required of any of his Majesty's subjects within this colony, or upon their estates, upon any pretence, but by the assent of the General Assembly of this colony." (*Pitkin* vol. 1, p. 80.) At an early period, the same principle was asserted in New Jersey. The attempt of Andross to impose customs upon the people of New Jersey drew forth the admirable defence which was made by the proprietors against such a demand. They asserted that it was in direct opposition to the *English right of common assent to taxes*. Similar declarations were made at different times in nearly all of the colonies.

act of Parliament in England.¹ But this single measure could hardly be regarded as ground for a general exception of power. Whatever views then, might be held, as to the right of Parliament to bind the colonists in other respects, almost universal opinion was against such a right in the case in question.² But different views were entertained in England, and attempts were made at various times to impose taxes upon the colonists. This was even done at first by *royal* authority; the King, or officers acting under his direction, ordering such levies as they should deem proper. But this was too evidently opposed to the whole spirit of the British constitution, to be long tolerated. Afterwards, it was continued by Parliament, and enactments were passed which were made to operate throughout the colonies, and by which large sums were drawn from them. In most instances, however, the operation of these enactments was indirect; they had been passed and were executed, under the general plea of regulating trade and commerce; a mode of procedure which gave to such enactments the least objectionable appearance or form. Yet even these enactments were strongly opposed by the colonists, not merely on account of their effect upon provincial interests in a commercial sense, but also as a violation of constitutional rights. The "navigation laws," were expressly resisted. Massachusetts declared that she apprehended them to be an invasion of the rights, liberties, and properties of his Majesty's subjects in the colony, *they not being represented in Parliament*, and as a saving of the rights of the province, a law was passed by the Assembly requiring the acts in question to be observed. It is still probable that had the authority of Parliament been confined to a general regulation of trade and commerce, the colonies would have finally acquiesced, and submitted. But this was not done; more direct methods were now to be attempted. In addition to a monopoly of the proceeds of American industry in the course of trade, the British government resolved upon drawing a revenue from the provinces by internal taxation. It has been seen, that just previ-

¹ Story, vol. I, p. 111.

² It was by no means an unreasoning opinion in some of the colonies, that acts of Parliament could bind them without their own assents.

ous to the commencement of the war, a plan had been formed by the Ministry for laying a tax on the colonies by act of Parliament. But the opposition then made, prevented the projector from pressing the scheme, at a time when full co-operation and union were of so much importance. And the spirit then was manifested by the colonists, even during the continuance of the contest, gave but little encouragement for the renewal of such a design. The provincial governments indeed, in most instances, met, and sometimes exceeded, the requisitions that were made, yet the amount to be given, as well as the particular appropriations, were carefully directed by the Assemblies, and sometimes their own discretion was followed, in opposition to special demands. The Assembly of New Jersey refused to accede to the demands of Lord Loudoun, and declared that they could not think themselves "divested of a right of judging of the expediency and possibility of complying with any demands made upon the colony." But at the conclusion of the war with France and Spain, there was supposed to be both an opportunity and a necessity, for an extension of Parliamentary power. The war, it was said, had been of American origin; that in its prosecution the mother country had become deeply involved in debt; and hence that demands upon the colonists might justly be made. It was apparently forgotten that the colonists had constantly contributed according to their ability, and that their exertions had tended to preserve an union, which, if important to themselves, was not less important to the parent State. The caution necessary in applying a scheme which even in a less naked and questionable shape had met with much

* Lord Loudoun demanded "in the King's name, that one thousand men should be furnished. But the Assembly resolved upon raising but five hundred at the time, and said that an additional number could not be supplied "in the present posture of affairs." A communication was afterwards received in which it was said that the Minister (Pitt) expected an large body of men as they were able to raise. An act was soon afterwards passed for completing the regiment to one thousand effective men; but the House declared that "the exacting obedience to any determinate proposal, from a people willing and desirous to do their utmost in a cause that so intimately concerns them, would in our opinion not answer the design and would essentially vary from that constitutional method which has heretofore borne many generous and honourably distinguished the English name."

opposition, was also apparently forgotten, or wholly overlooked. But interest, if it sharpened the vision of men to their particular advantages, seems sometimes to obscure perception in regard to the rights of others: such was the case at this time with the statesmen of England. Even Pitt, at first, seemed looking in this way. In 1760, before the conclusion of the war, he wrote to Fauquier, the Governor of Virginia, that though they had made grants to the colonies, yet when the war was over they should tax them in order *to raise a revenue from them*. Fauquier prudently replied, that such an attempt might give rise to much dissatisfaction.⁵ Upon further reflection, Pitt became sensible of the impolicy, as well as the injustice of the measure proposed. But others had less acuteness, or were less scrupulous than Pitt.

In 1764, Grenville, the Prime Minister, communicated to the several colonial agents, his intentions of drawing a revenue from the colonies, and that with this view he should, at the ensuing session of Parliament, propose a duty on stamps. But he was willing that they should consider the subject, and inform him whether any other duty equally productive could be substituted.⁶ But as no proposals which the Minister deemed satisfactory, were made, the contemplated measure was brought forward. The act passed both Houses of Parliament, and on the 22d of March, 1765, it

Colonial Opposition to the Stamp Act.

* Some of the agents made immediate objection to the scheme, and when communicated to the colonies, it there met with strenuous opposition. In May, 1764, the people of Boston declared that such a tax "would annihilate our charter rights as persons and free subjects, it would reduce them to slaves, which as we have never forfeited, we hold in common with our fellow subjects, who are neither slaves nor freemen. To tax them without their consent, without our having a legal representation where they are laid, we are reduced from the character of free subjects to the state of slaves." Similar language was used in several of the other colonies. In February, 1765, several of the colonial agents in England waited on the Minister to remonstrate against the stamp bill, and to propose that in case any tax must be laid upon America, the several colonies might be permitted to lay it themselves. *The Minister was assured that the colonies would readily grant whatever the Crown should demand, if they were only permitted to have a legal representation in the House of Commons.* He then proposed to lay plans, and said that he had pledged himself to offer the stamp bill to the House.

received the Royal assent.⁷ In the debate on this bill, the Ministry publicly declared *that it was intended to establish the power of Great Britain to tax the colonies.*

Upon the passage of the act, the colonial agents were informed that it was not the intention of the Ministers to send stamp officers from England, but to appoint respectable persons from among the inhabitants, and the agents were requested to nominate such. William Coxe, Esq., was appointed for New Jersey. The operation of the act was to commence on the 1st of November. Probably from an apprehension that some opposition might be made, a supplement to the annual mutiny bill was passed almost at the same time, authorizing the quartering of troops in the colonies, and directing the Assemblies to make provision for them, in a manner entirely unusual.

The character and tendency of these measures were clearly perceived, and they were met by the colonists with a boldness and unanimity which would seem to have proceeded from a deep and general conviction in relation to their rights, and a strong determination to maintain them. The Assembly of Virginia was the first that met, after the news of the passage of the stamp act was received, and was the first to give a public declaration of opinion. A number of resolutions offered by Patrick Henry were passed by that body, in which the rights of the colonists were stated in the strongest manner. They asserted, that the General Assembly of that colony had the sole right and power to lay taxes upon the inhabitants, and that every attempt to vest such power elsewhere than in the Assembly aforesaid, tended to the destruction of British as well as American freedom.⁸ Very soon afterwards, before the action that had been taken in Virginia was known, the subject was taken up in the House of Representatives in Massachusetts, and a resolution was passed by that body declaring it to be expedient that a Congress composed of Commis-

⁷ The bill passed the House by a vote of 250 to 59, and the House of Lords with great unanimity.

⁸ Dr. Franklin nominated the agents for Pennsylvania and for New Jersey. Yet though in this particular he forwarded the measures of the Minister, he still perceived and represented the true nature and tendency of the act.

⁹ See these resolutions in Writs' Life of Henry, p. 56.

sioners from all the colonies should be held at New York on the first Tuesday of October, 1765. This measure was recommended in order that they might consult "upon the present circumstances of the colonies, and the difficulties to which they are, and must be reduced in consequence of the late acts of Parliament." Three persons were immediately appointed to attend such Congress, and a circular was addressed to the other colonies urging a similar appointment.

This circular was laid before the Assembly of New Jersey on the 20th of June, 1765. But Governor Franklin, who (as his father remarked at a subsequent period,) was "a thorough government man,"¹⁰ was willing to favor and forward the schemes of the Ministry, and his influence was therefore exerted against the present proposal. It must also be acknowledged, that it did not receive from the House the attention that its importance required. The Assembly was then on the point of adjournment, and a hasty and somewhat ambiguous expression of opinion was made, and the Speaker was directed to transmit the answer to the Massachusetts Assembly. This answer implied, that the Assembly declined a concurrence in the contemplated movement. But subsequent reflection, or intercourse with their constituents, brought the members to a different conclusion, and it was then thought expedient to attempt a correction of their former proceedings.¹¹ A

¹⁰ Franklin's Letters.

¹¹ These proceedings, with the subsequent measures connected with them, gave rise to a correspondence of some severity between the Governor and the House. The Governor said, that according to their own expressions, they had taken the proposal from Massachusetts into "deliberate consideration," and had "unanimously resolved against connecting on that occasion." The House declared (July 27th, 1766,) that they acknowledged the letter from Massachusetts, but that it was on the last day of the session, some members gone, and others uneasy to be gone; that the Speaker agreed to send, nay, urged that members should be sent to the intended Congress, but that he changed his mind upon some *advice* that was given him; that this sudden change of opinion displeased many of the House, who seeing the matter dropped, were indifferent about it. But they said that the letter of the House was such as the Governor represented it, and that if the strong expressions mentioned, were used, an alteration must have been made, and they intimated that his Excellency had been instrumental in making it. — *Mass.*, vol. 3. *Geoffrey's History*, p. 138.

circular was therefore addressed to the members, by the Speaker, and a Convention was held at Amboy, where it was resolved that delegates should be appointed to the Congress of New York; accordingly, Joseph Ogden, the Speaker of the Assembly, Hendrick Fisher, and Joseph Borden, were appointed. This meeting and the proceedings thereof were denounced by Governor Franklin as being "unprecedented, irregular and unconstitutional."¹² The meeting of Commissioners at New York was held at the appointed time, (Tuesday, October, 1765.) There were representatives from most of the colonies.¹³ This was the first Convention of the colonies for the purpose of considering their rights and privileges, and obtaining redress for a violation of them. They put forth a full and free declaration, and agreed upon petitions and representations to the King and to Parliament.¹⁴ Some difference of opinion occurred in relation to the question, whether the petitions agreed upon should be transmitted by the Convention, or by the several provincial Assemblies. Messrs. Rogers, of Massachusetts, the Chairman of the Convention, and Ogden, of New Jersey, advocated the latter mode, and refused to sign with the other members of the Convention.

¹² This meeting is worthy of notice. It was not strictly a meeting of the Assembly, but a Convention of the members, and was the first of a series of movements made within the sanction of the Governor. The measure was approved and intended by the Assembly at their subsequent meeting; it was said that the members present at the time, came together, persuaded that his Excellency had declared within the House, that Congress, however assembled, that he had not been applied to; that though a majority of the Assembly were present they did not meet in any legislative capacity, but to prevent disorder, and preserve the peace of the government; and that they would think with his Excellency, that it was a violation of the principles of the constitution.

¹³ These were delegates from Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and South Carolina. New Hampshire, Georgia, Virginia, and North Carolina, were not represented, but the two former gave assurances of their willingness to unite in petitions to the King and Parliament. The Assemblies of the two latter had not been in session since a proposition for a Convention had been made, and the Governors refused to call special sessions for the purpose, and the independent course pursued in New Jersey, was not attempted.

¹⁴ The proceedings of this meeting were of high importance; they are given at length in *Political History*, pp. 346, 348. See also *Constitutional History*, vol. I, p. 126.

The Assembly of New Jersey was convened on the 27th of September, by the Governor, at the request of the Speaker, Ogden, some of the members of the House. The course that had been pursued by Ogden in refusing to join in the final proceedings of the Convention at New York, was much disapproved in the province, and in consequence he resigned his seat in the Assembly, a new Speaker, Cortland Skinner, was chosen. A report of the proceedings of the meeting at New York was laid before the Assembly by the other delegates, and was unanimously approved. A series of resolutions were also adopted reiterating the views of the Convention, and the House declared that as the late act of Parliament (the stamp act,) was found to be utterly subversive of the rights and privileges inherent in, and originally secured by grants and concessions from the Crown of Great Britain to the people of the colony, they considered it a duty to themselves, their constituents, and posterity, to leave a record of their resolves upon their journal.

Resolved 1. That his Majesty's subjects, inhabiting this province, are naturally attached to his Royal person and government; and have ever been, we doubt not ever will, their names and blood and identity be, according to the constitutional requirements of the Crown, as they have been from time immemorial made to this colony. 2. That his Majesty's liege subjects in this colony are entitled to all the inherent rights and liberties of his natural-born subjects in the kingdom of Great Britain. 3. That it is inseparably essential to the safety and interest of the people, and the undoubted right of Englishmen, that no taxes be imposed on them but with their own consent, given personally or by their Representatives. 4. That the people of this colony are so situated by the constitution, cannot be represented in the Parliament of Great Britain; and if the principle of taxing the colonies without their consent, should be adopted, the people here would be subjected to the burden of two legislatures, a parliament in Great Britain, and not so well fitted to regulate the interests of the colony. 5. That the only representatives of the people of this colony are persons chosen by themselves; and that no taxes ever have been, or can be imposed on them, agreeable to the constitution of this province, granted and confirmed by his Majesty's gracious predecessors, but by their own legislature. 6. That all supplies and free gifts, for the people of Great Britain to grant to his Majesty the profits of the people of this colony, without their consent, and being represented, would be unreasonable, and render legislation in this colony useless, in the essential point. 7. That the profits of trade arising from this colony, coming in Great Britain, eventually contributes to the supplies granted there to the crown. 8. That the giving unlimited power to any subject in his Majesty's

Immediately afterwards the House was prorogued by the Governor, and his Excellency took this opportunity to express his dissatisfaction with the late transactions, and his surprise¹ at the present proceedings of the House, especially their approval of the meeting at Amboy.

The opposition to the stamp act was so general and decided throughout the colonies, that before the time for its operation arrived (November 17th, neither stamps or stamp officers were to be found. In New Jersey, beside the acts that have been noticed, the sense of the people was otherwise expressed. In September, Coxe, the stamp officer for the province, voluntarily resigned, and subsequently published a copy of his resignation and declared that he had appointed no deputy, and would never act under the law. In different places throughout the province the people in public declarations, or by other means, manifested their opposition to an observance of the act.¹⁶ After the time had arrived for the opera-

impose what taxes they please in the colonies, under the mode of regulating the prices of stamp vellum, parchment and paper, appears to be unconstitutional, contrary to the rights of the subjects, and apparently dangerous in its character. 9. That any incumbence, which in effect restrains the liberty of the press in America, is an infringement upon the subject's liberty. 10. That the extension of the powers of the Court of Admiralty, within this province, beyond its ancient limits, is a violent innovation on the right of trial by jury, a right which this House, upon the principles of their British ancestors, hold most dear and invaluable. 11. That as the tranquility of this colony hath been interrupted through fear of the dreadful consequences of the stamp act, that therefore the officers of the government, who go on in their offices for the peace and good of the province in the accustomed manner, while things are in their present unsettled condition, will, in the opinion of this House, be entitled to the countenance of the legislature; and it is recommended to our constituents, to use what endeavours lie in their power, to preserve the peace, quiet, order, harmony, and good order of the government, that no heats, disorders, or animosities, may in the least obstruct the united endeavours that are now sincerely engaged for the repealing of the act above mentioned, and other acts affecting the trade of the colonies. *Ibid.*, vol. 3. *Coedon's New Jersey*, p. 140.

¹⁶ The freemen of the county of Essex made strong declarations, asserting that the act was unconstitutional, and that they would in no wise give it countenance or support. The inhabitants of Salem learning that John Hatton, a resident there, was desirous to be employed in the distribution of stamps, obliged him to relinquish the design. These measures of resistance were urged and supported

tion of the law, as the use of all but stamp paper was forbidden in formal transactions, a period of much confusion occurred: the courts were closed, and business was almost suspended. But this period was of short duration: the colonists resolved to brave the consequences. In February, 1766, a meeting of the members of the bar, in New Jersey, was held at New Brunswick, to consider the propriety of continuing their practice, and they determined to resume it on the ensuing April, without any regard to the act. The public offices were soon afterward re-opened.¹⁷

It was fortunate that whilst these transactions were taking place in America, a train of circumstances unconnected with colonial affairs, led to a change of the Ministry in England. The Grenville party were displaced, and were succeeded by an administration with different views. The Parliament was opened by a speech from the Throne, in which his Majesty declared that he had "firm confidence in their wisdom and zeal, which he trusted would guide them to such sound and prudent resolutions as might tend to preserve the constitutional rights of the British Legislature in the colonies, and restore them to that harmony and tranquility which had been interrupted by disorders of the most dangerous nature." The new Ministers were disposed to measures of relief, but their action was accelerated (though perhaps its direction was somewhat changed,) by the subsequent debate. Pitt came forward upon the motion for the address, and condemned in the most positive terms, the act for collecting stamp duties, and declared that Parliament *had no right to tax the colonies*. He yet asserted, that "the authority of the British government is supreme in every circumstance of government and legislation whatever," maintain-

by an association of persons who styled themselves "Sons of Liberty," and whose special object was, to prevent any attempt to carry the stamp act into execution. This association had originated in Connecticut and New York, and found themselves, among other things, to march to any part of the continent, at their own expense, to support the British constitution in America, by which, it was understood, and stated, that an opposition to the stamp act was meant. The association finally extended into other colonies; they were in active operation in New Jersey.

ing the proposition, that taxation is no part of the governing power, but that taxes were a voluntary gift and grant of the people. He recommended that the stamp act should be repealed, *absolutely, totally and immediately*. These views were strongly opposed by the late Ministers, especially by Grenville who manifested the greatest hostility to American interests and claims, and urged the execution of the stamp act every hazard. He said that the disturbances in America were growing to tumults and riots, and if the doctrine he had heard that day, should be confirmed, he feared that instead of riot, there would soon be revolution. He contended that taxation was a part of the sovereign power, and that it might be, and had been exercised over those who were not represented. The administration, with their supporters, resolved upon an intermediate course. The stamp act was totally repealed, but the repeal was attended by a "declaratory act," in which the power and right of Great Britain to bind the colonies *in all cases whatever*, was asserted.¹⁸ The repeal and the declaratory act passed the House together on the 5th of March, 1766, and were sent to the House of Lords. In the latter House, the repeal was strenuously opposed, but the measure was strongly supported by Lord Camden. He denied the right of Parliament to tax the colonists because unrepresented. "Taxation and representation," he said, "were inseparably connected, no British Parliament can separate them; to endeavour to do it is to stab our vitals." The two bills passed

¹⁸ Although the debates of the House in relation to the stamp act seemed to touch most upon constitutional questions, yet other considerations had scarcely less weight. The merchants and manufacturers exerted themselves in favor of repeal. The non-importation agreements which had been entered into by the colonists, and the confusion that existed, were found extremely prejudicial to the commercial interests of the country. The condition, disposition, and feelings of the colonists, were also considered. Persons were examined before the House, touching these particulars; Franklin underwent a long examination, and he declared to the House, that the Americans *would pay the stamp duties, however modified*, and that the Assemblies would not acknowledge the right of Parliament to tax them, or rescind their resolutions upon that point "unless compelled by force of arms." The petition from the American Congress was rejected, because the meeting had not been called under authority from the Crown, yet this and other petitions on the subject, had their influence.

he House of Lords on the 18th of March, and on the following day received the Royal assent.¹⁹

The news of the repeal of the stamp act was received in America with the highest satisfaction. The relief from an immediate evil was deemed of so much importance, that but little attention was paid to the principles and claims that were advanced in the declaratory act; indeed that act was considered as being designed rather to save the honor or pride of Great Britain, than to point out the course to be afterwards pursued.

The Legislature of New Jersey was convened by the Governor on the 11th of June, 1766. His Excellency said that he had deferred the meeting until he was enabled to communicate the determination of his Majesty, and of Parliament, respecting the stamp act, and he congratulated the House upon the repeal. He expressed his satisfaction that no act of outrage or violence had been committed in the province, and spoke of the "tenderness, lenity, and consideration, the wisdom, justice, and equity which his Majesty and the Parliament have manifested on this signal occasion." An address was afterwards prepared by the Assembly, to the King, in which they expressed their gratitude to his Majesty, his Ministry, and Parliament, for the relief that was experienced by the removal of the burden of an "impolitic law."

¹⁹ The King himself was opposed to the repeal, as were all his particular favorites, and confidants. The Lords of the Bedchamber, and most of the Bishops, as is said, urged that America should rather be desolated with fire and sword, than pacified by concession. *Griffith's Historical Notes*, p. 26.

CHAPTER XIX.

IMPOSITION OF NEW TAXES.—OPPOSITION TO THE NEW TAXES.—
THE TEA DUTY.—THE TEA DUTY RESISTED.—CONGRESS OF THE
COLONIES.—PROCEEDINGS OF CONGRESS APPROVED IN NEW
JERSEY.—COERCIVE MEASURES OF ENGLAND.

THE joy of the colonists on account of the repeal of the "impolitic law," was not long continued. Measures soon followed that were calculated to dampen satisfaction, and revive distrust. A circular was received in the colonies from Secretary Conway, in which he announced, that the King and Parliament were disposed to forgive and forget the marks of an undutiful disposition that had lately been shown, but at the same time required, that full and ample compensation should be made to those who had suffered from their deference to the act of the British legislature. This order, though it might bear the semblance of justice, was yet founded upon an assumption of the rightfulness of the act which the people had resisted. This, together with other circumstances, caused it to be but tardily and reluctantly complied with. Yet as this was finally done, no important difficulty arose from this source.¹ More serious dissatisfaction was created by the execution of the act for quartering soldiers in the colonies. This act required, that the troops should be furnished with quarters, fire, bedding, candles, small beer, rum, &c., at the expense of the colo-

¹ The compensation required was for injuries done to the property of persons connected with the distribution of stamps. In Boston and New York, especially the former, opposition had been carried to violence, and the houses of some of the officers demolished. The order for compensation was rendered more displeasing in Massachusetts, by the arrogant and positive manner of Governor Bernard in demanding compliance therewith. The compensation was finally made, but was connected with the addition of a free pardon to all offenders. In this form the act was but little acceptable, and was rejected by his Majesty, but the compensation was afterwards furnished to the sufferers.

ies, and thus in effect a direct and unusual tax, was imposed. In Massachusetts the requisition was partially complied with. In New York the Governor applied to the Assembly to make the required provision for the troops that had lately arrived under General Gage, but the House replied, that according to their construction of the act, it required, that all the forces that should at any time enter the colony should be quartered during the whole year in a very unusual manner, and that by marching several regiments into the colony, the expense would be ruinous, and that they could not, consistent with their duty to their constituents, put into the power of any one (whatever might be their confidence in his prudence or integrity,) to impose such a burden. The requisition was laid before the Assembly of New Jersey in June, 1766, and the House directed that provision should be made *according to the former laws of the colony*. The subject was frequently urged by the Governor, who insisted upon full compliance; but the unusual requisitions for the accommodation and supply of the officers and troops, were said by the House to be a matter of "surprise and concern," and they informed the Governor that they looked upon the act for quartering soldiers in America to be virtually as much an act for laying taxes, as the Stamp act.²

But occurrences of a character still more unfavorable to harmony soon took place. In July, 1766, the administration of the Marquis of Rockingham terminated, and was succeeded by one composed of men of various political principles and parties. Charles Townsend, a man whose qualities were far more brilliant than solid, became Chancellor of the exchequer, and he presently ventured a boast that he was able to devise a plan for taxing the colonists. Grenville, the former Minister, actuated by dislike to the colonists, or by a desire to retrieve in some manner his former defeat, was constantly urging the adoption of plans for this purpose, and at length abruptly charged upon the Ministry, that they were deterred by fear from making the attempt. Townsend, yielding to an excitement but little suited to the place or the occasion, hastily declared: "I dare tax America," and directly proceeded

² Votes. Franklin's letter to Shelburne.

to vindicate his courage, at the expense it may be of his judgment, and certainly at the cost of the best interests of the country. Unhappily, a change had occurred in Parliament that enabled the Minister to carry out his designs; a sense of justice had given way to a feeling of pride, and a desire to reduce the colonist again to subjection, began to prevail. Under these circumstances the Minister submitted a bill to the House for imposing duties on glass, paper, paste-board, white and red lead, painter's colours, and tea, payable on the importation of these articles into the colonies. The preamble declared that it was expedient to *raise a revenue* in America, and to make more certain and adequate provisions for defraying the charge of the administration of justice in the provinces.³ This bill passed both Houses of Parliament with scarcely any opposition, and became a law in June, 1767. Very soon afterwards, the conduct of the Assemblies of Massachusetts and New York was brought into notice; the refusal of the latter to comply with the requisitions for supplying the troops, gave particular offence, and an act was passed restraining the Legislature of that province from passing *any act whatever*, until the late requisitions were complied with. Nearly at the same time, an enactment was made authorizing the King to put the customs and other duties in America, and the execution of the laws relating to trade there, under the management of Commissioners, to be appointed for that purpose, and to reside in the colonies.

These three acts were received in America almost at the same time. The passage of such laws within one year after the struggle against the stamp act, excited amazement and indignation throughout the colonies. The act for laying duties on glass and other articles, if somewhat different in form, as it imposed charges to be paid upon imports, was yet in its principle and objects the same as the stamp act. It was still a plan for taxing the people without their consent. The entire suspension of legislation in a

³ A provision in the bill empowered the Crown to establish a general court throughout every colony in North America to any extent, with salaries, pensions, or appointments to the whole amount of the new duties. This was the attainment of the object that had been taught by every Minister since the reign of Charles II, the establishment of a civil list independent of the Assemblies. It was a great advance toward the destruction of liberty.

colony, was a still further exercise of arbitrary power. Parliament not only assumed the functions which could only be rightfully performed by the provincial Assemblies, but threatened in effect, to destroy the Assemblies themselves. If government could be wholly suspended at the pleasure of Parliament, the colonists were slaves indeed. But the same temper and spirit that had formerly been manifested, were yet in existence in the provinces; and if resistance to the measures that were now in progress was not so suddenly exhibited as on a former occasion, a feeling perhaps still deeper, was gradually awakened. The people began to inquire with closer scrutiny concerning their rights. Able political essays were published, in which the real nature and tendency of the measures of Parliament were clearly set forth, and the people were exhorted to firmness and vigilance.⁴ Determination increased with the light that was elicited by discussion and inquiry.

In December, 1767, the Assembly of Massachusetts convened, and early in the session entered upon the consideration of the recent enactments of Parliament. The Assembly plainly perceived that the former attempt was renewed, and they at once resolved to oppose it. They advanced anew their claim to all the rights enjoyed by other subjects, and declared, that the late acts of Parliament, as well as those formerly passed, were as much revenue acts as the land tax, customs, and excises in England. In reference to the restraints upon the Legislature of New York, they said, that the extension of such restrictions would be a short and easy way of destroying all Legislative authority in America. In February, 1768, they adopted a resolution for addressing a circular letter to the other colonies concerning the difficulties that must accrue by the operation of the several acts imposing duties and customs on the colonies. This circular was laid before the Assembly of New Jersey, by the Speaker, on the 15th of April, 1768, and on the following day it was referred to a committee to

⁴ Among the most able of these papers were the "Letters of a Pennsylvania Farmer," written by John Dickinson. They obtained a great circulation and wide popularity. Dickinson warned his countrymen not to be deceived by the moderation of the new duties; declared that there was no solid distinction between the present and the former mode of taxation; and urged to a resort to the same measures of resistance that had formerly prevailed.

prepare and bring in an answer. A suitable reply was accordingly prepared, and was transmitted to the Massachusetts Assembly. Soon afterwards the House resolved that a dutiful and loyal address should be presented to his Majesty, humbly beseeching him to consider the distressed condition of the colonies. On the 7th of May the address was agreed to.⁵

*The address set forth that "before that happy period in which the empire of the British dominions was, by the favor of Divine Providence, for the felicity of those dominions, and of Europe in general, established in your illustrious House; our ancestors, with the consent of the Crown, removed from their native land, then abounding in all blessings, but that perfect security of liberty, and that merited spirit of administration which render your royal family so justly dear to your remotest subjects; and ventured with their helpless relatives through a vast ocean, and trusted themselves with their tender companions to the unknown wilderness of the New World, the horrors of which no consideration could render tolerable but the prospect of enjoying here that complete freedom which Britons never thought could be purchased at too dear a price. The subjects thus emigrating brought with them, as inherent in their persons, all the rights and liberties of natural born subjects within the parent state; in consequence of these, a government was formed under which they have been constantly exercised and enjoyed by the inhabitants, and repeatedly and solemnly recognized and confirmed by your royal predecessors and the legislature of Great Britain. One of these rights and liberties vested in the people of this colony, is the privilege of being exempt from any taxation but such as is imposed on them by themselves, or by their Representatives; and this they esteem so invaluable, that they are fully persuaded, no other can exist without it. Your Majesty's signal distinction is, that you reign over freemen, and your peculiar glory, that you reign in such a manner, that your subjects, the disposers of their own property, are ready and willing whenever your service calls upon them, with their lives and fortunes, to assist your cause. Your people of this colony, who share in the blessings flowing from your wisdom and virtue, most gratefully sensible of their obligations to so excellent a Prince, hope they have never been deficient in duly acknowledging them; whenever it has been necessary that supplies should be levied within this colony, requisition by your Majesty, or by your royal predecessors, conformable to the rights and liberties of this, your people, have been made, and readily complied with. We beseech your Majesty to do them the justice to believe that they can never fail on any future occasion to demonstrate their devotion. With such sentiments, your people observe with the greatest anxiety and concern that duties have been lately imposed on them by Parliament, for the sole and express purpose of raising a revenue. This is a taxation upon them from which they conceive they ought to be protected by the acknowledged principles of the constitution, that freemen cannot be taxed

The circular of Massachusetts to the other colonies, created alarm in the British Colonies: it was supposed to be preparatory to another Congress, and concert of action among the provinces was dreaded. As a member of parliament, Lord Hillsborough, the Secretary of State for the colonies, addressed a letter to the Governor of Massachusetts, directing him to require the Assembly, in his Majesty's name, to *rescind* the resolution in relation to the circular, and to declare their disapprobation of "that rash and hasty proceeding." A letter was also directed to the Governors of the several colonies, to be laid before the respective Assemblies, in which the conduct of Massachusetts in sending the circular, was declared to be "dangerous and factious" in its tendency; and directions were given to the Governors to use their influence to prevent the Assemblies from taking any notice of the circular, that thereby it might be treated "with the contempt it deserved." It is not certain that the warning or direction of the Secretary was made known to the Assembly of New Jersey before action was taken in the case, but if so, no effect whatever was produced. No greater impression was made in the other colonies.⁶ But the Assemblies were generally dissuaded upon their refusal to comply with the Secretary's wishes.

In the mean time, the new Board of Commissioners of Customs established by the King, had entered upon the duties of their office at Boston. They soon manifested an intention to enforce the laws relating to trade, in the strictest manner. In May, 1768, the sloop *Liberty*, belonging to John Hancock, arrived at Boston laden with wines from Madeira. In landing the cargo, the mode of procedure which had hitherto prevailed, was pursued.

out by themselves, or by their Representatives, and that they are represented in Parliament, they not only cannot allow, but are convinced that from their best circumstances they need not do." *Idem*, vol. 3. *London*, p. 146.

[⁶ The Assembly of Massachusetts decided by a vote of ninety-two to seventeen, that they *would not rescind* the resolutions of the former House. The Assembly of New York resolved that they had no authority that to correspond and consult with any of the neighboring colonies, or with any others of his Majesty's subjects out of the colonies, on any matter or thing whereby they might conceive their rights or liberties to be affected. Still stronger declarations were made by the Assembly of Maryland.

but the Commissioners declared that a false entry had been made, and an order was given that the sloop should be seized. Whether the allegation of the officers was supposed to be unfounded or not, the resort to force was considered an outrage, and was forcibly met. Scenes of violence and tumult ensued, in which the prohibitions or requisitions of law were but little regarded by any. The measures of coercion which the officers of the Crown had been the first to adopt, were afterwards further pursued, or prepared for; two regiments of troops were quartered in the town, for the purpose, as was said, of "giving assistance to the Magistrates in the preservation of peace, and the officers of customs in the execution of the laws of trade. As might have been expected, increased irritation and excitement was produced.

Whilst these events were passing in America, each session of Parliament was opened with information from the King, that a disposition prevailed in the colonies to refuse obedience to the laws, and to resist the authority of the supreme legislature of the realm. In answer to these representations, joint resolutions of both Houses were adopted in February, 1769, condemning the acts of the Americans, and an address was agreed upon approving the conduct of the Crown, and giving assurances of support for enforcing the laws within the province of Massachusetts. A request was also made to the King, that he would bring to punishment the authors of the late disorders, and that he would direct the Governor of Massachusetts Bay, to take the most effectual means for obtaining the fullest information concerning all *treasons* and misprisions of *treason* committed within his government since the year 1767, with the *names* of the persons who had been active in promoting them; that prosecutions might be instituted against them "within this realm, pursuant to the provisions of the Statute of the 35th, of Henry VIII." The King, in reply, assured Parliament of his determination to give orders for bringing the authors of the disorders in Massachusetts to "condign punishment."

Though these proceedings were directed especially against Massachusetts, yet all the colonies considered themselves affected thereby. The threat to transport the colonists to England for trial

excited strong indignation. The Assembly of New Jersey, (in accordance with the previous action of the House of Burgesses in Virginia,) passed a resolution, that all trials for treasons or misprisions of treason, or any felony or crime whatever, committed by any person residing in the colony, ought to be in, and before, his Majesty's courts in the colony; and that the seizing any person residing in the colony suspected of any crime committed there, and sending such person to places beyond the seas to be tried, is highly derogatory of the rights of British subjects; as thereby the inestimable privilege of a trial by a jury of the vicinage, as well as the liberty of producing witnesses in such trial, will be taken away.*

Notwithstanding the strong resolutions of Parliament already noticed, an attempt was made in the winter of 1769, to obtain a repeal of the act imposing the new duties. But the proposal was resisted at the time; it being represented that it was an improper season to yield to the demands of the colonists; it would be time enough, it was said, when they had shown a disposition to submit. Lord North declared, that though prudence or policy might hereafter induce Parliament to repeal the acts, he hoped it would not be thought of, until America was prostrate at their feet. Yet, in May, after the close of the session, Lord Hillsborough directed a circular to the Governors of the several colonies, in which he gave an assurance, "notwithstanding insinuations to the contrary," that the existing administration had at no time entertained a design to lay farther taxes in America for the purpose of raising a revenue, and that it was their intention to propose, at the next session of Parliament, to take off the duties on glass, paper, and colours, upon consideration that these duties had been laid contrary to the true principles of commerce. But beside the uncertainty as to the final fulfilment of these declarations, they were not such, as to their ground, or their scope, as could give satisfaction.† Hence the colonists continued their efforts to maintain their claims. Beside renewed declarations, non-importation agreements were gone-

* *Resolution, passed December 8th, 1769.*

† The Secretary proposed but a partial repeal, and that upon the ground of commercial policy. No security would thus have been given to the rights of the colonists, and trade would still have been shackled.

rally continued, or new ones formed, by the merchants and traders of the principal cities. New Jersey, from her limited trade, was unable to give decisive support to measures of this description by direct co-operation; but her cordial approval was expressed. In October, 1769, the General Assembly resolved, by an unanimous vote, "that the thanks of the House be given to the merchants and traders of this colony, and of the colonies of New York and Pennsylvania, for their disinterested and public spirited conduct in withholding their importations of British merchandize until certain acts of Parliament laying restrictions on American commerce for the express purpose of raising a revenue in America, be repealed." Meetings of the people were also held, where similar views were expressed, and the violations of the non-importation agreements, which had occurred at different places, were severely condemned;¹⁰

Parliament again met on the 9th of January, 1770, and soon afterwards Lord North was appointed to the place of First Lord of the Treasury. America was not yet "prostrate," on the contrary, universal and determined opposition to the measures of Parliament was still maintained. Notwithstanding, on the 5th of March, 1770, a bill was introduced by Lord North himself, for the removal of the duties imposed by the act of 1767, on all the articles excepting *tea*. The amount of revenue derived from the duties had been as nothing compared with the injury done by the interruption of harmony and intercourse. The trading interests of England had been materially affected by the non-importation agreements of the colonists. The Ministry were willing to remove

¹⁰ At Newport and Albany importations were continued for a time, except of dutiable articles, but upon urgent representations from other places, especially from Boston, the general system was acceded to. But in New York the exclusive system was not generally observed; articles not dutiable were imported, notwithstanding the agreements previously formed. These delinquencies were strongly censured in New Jersey. At a meeting of the freeholders, merchants, and traders of the county of Essex, it was resolved, that they would not themselves, or by others, receive, purchase, sell, or otherwise use any articles imported from Great Britain, contrary to the agreement, and that they would not trade nor have any commercial intercourse with persons who should import goods, or cause them to be imported, or with any person who should purchase goods so imported. Pitkin. Gordon, p. 147.

the obstructions to trade, but wished to uphold the supremacy of Parliament, and the measures of Lord North were taken accordingly. The bill repealing the revenue act, reserving only the duty on tea, was passed on the 12th of April, 1770.

This compromising course was by no means calculated to satisfy the colonists. They had not objected to the number of articles subjected to duty, or the amount obtained; it was the principle to which they were opposed, and this principle was retained. Hence, the partial repeal of the acts was not received in the manner the Ministry probably expected. The colonists considered the retention of the duty on tea as being designed to establish a "precedent against them."¹¹ In regard to the article reserved, the non-importation agreements were rigidly observed, and a feeling of merely mitigated distrust was generally prevalent. Nor was this without reason; beside the "precedent against them," other enactments continued in force which bore heavily on the interests, or were irritating to the feelings of the colonists. The "sugar act," which had been in operation prior to the passage of the stamp act, was yet in existence. The act establishing a Board of Commissioners of the revenue, the mutiny act for quartering soldiers in the colonies, and that for suspending legislation in New York, were yet unrepealed, as was also the declaratory act which asserted the supremacy of Parliament in all cases whatever. New causes of uneasiness were soon superadded. The continuance of the soldiery in Boston was a source of constant irritation, and quarrels between the troops and the citizens were of frequent occurrence. At length an actual collision occurred, and the people were fired on by a party of soldiers, and several persons were killed. This event was felt throughout the whole of the colonies. Massachusetts, already deeply stung by this occurrence, was soon afterwards aggravated still farther. Disputes had occurred between the Governor and the Assembly in relation to the tax bill for the support of government, and as neither party would yield, no tax bill was passed. In 1772, information was received that provision had been made by the Crown for supporting the Governor, independent of the Assembly. No measure since the passage of the stamp

¹¹ Virginia Resolves.

act excited more general dissatisfaction than this, and it was solemnly protested against as tending to fasten upon the province a despotic administration of government. Yet it was afterwards extended by granting independent salaries to the Judges of the Superior Court.

The disturbed state of feeling in consequence of these occurrences, led to frequent meetings of the people, and at a meeting held in Boston, in November, 1772, a committee of twenty-one persons was appointed to state the rights of the colonies in general, and of their own province in particular, and the committee were authorized to publish the statement to the several towns of the province, "and to the world."¹ A strong and full statement was accordingly made. In March, 1773, the Assembly of Virginia, (it may be with the knowledge and in support of the proceedings in Massachusetts,) passed a series of resolutions concerning the measures of Parliament, one of which provided for the appointment of a committee of correspondence and inquiry, to obtain early and authentic intelligence of such acts and resolutions of Parliament as might relate to America, and to maintain a communication with the sister colonies. This measure was met by corresponding resolves in most of the colonies. On the 8th of February, 1774, the Assembly of New Jersey resolved that "a committee of correspondence and inquiry be appointed to obtain the most early and authentic intelligence of all acts and resolutions of the British Parliament, or the proceedings of administration, that may have any relation to, or may effect the liberties and privileges of his Majesty's subjects in the British colonies in America, and to keep up and maintain a correspondence with our sister colonies respecting these important considerations; and that they occasionally lay their proceedings before the House."² It was also agreed that the resolution of the House should be transmitted to the Assemblies of the several colonies, and that thanks should be returned to the Assembly of Virginia for their early attention to the liberties of America.

¹The committee appointed were James Kusey, Stephen Crane, Hendrick Fisher, Samuel Tucker, John Wetherill, Robert Friend Price, John Hinchman, John Melhelm, and Edward Taylor. *Votes*, vol. 3, p. 122. *Gordon*, p. 154.

guard the interests and welfare of the people: that the interests of their constituents were inseparable from their own, and that they should assent to no measures destructive to their welfare; that they professed to be loyal subjects of the King, from whose goodness they hoped to be relieved from their present unhappy situation, and that they neither intended to usurp the rights of others, or allow any vested in them, to be taken out of their hands. They hoped that the differences between Great Britain and her colonies would be removed, on principles consistent with the rights and interests of both, and hence, although they could not perceive that the separate petition of one colony, would be likely to effect more than the united application of all, they still would pursue the mode which his Excellency had mentioned, hoping that the act would meet with the notice he had promised. The dispositions of the House were sufficiently manifested, and were fully perceived by the Governor. "It is now," he said, "in vain to argue, as you have with most uncommon and unnecessary precipitation given your entire assent to that destructive mode of proceeding, I so earnestly warned you against. Whether, after such a resolution, the petition you mention can be expected to produce any good effect, or whether you have consulted the true interests of the people, I leave others to determine."²⁷ The legislature made their petition, but, as was the case with others, it was spurned from the throne.

The British Parliament met on the 29th of November, 1774. The King informed them that most daring resistance to the laws continued to be made in Massachusetts, and that the proceedings here had been countenanced in other colonies, and that unwarrantable attempts had been made to obstruct the commerce of the kingdom by unlawful combinations. His Majesty expressed his reliance upon their aid to maintain the authority of Parliament throughout all the dominions subject to the Crown. The answer of the Commons entirely concurred with the views of the King, But the purposes of the Ministry, if formed at the time, were not fully explained. The First Lord of the Treasury merely announced, that after the usual recess for the holidays he would

²⁷ *Notes of February 2d, 1775.* *London*, p. 156.

bring the papers relating to America to the notice of the House.²⁸ Upon the assembling of Parliament, on the 20th of January, Lord Dartmouth, the Secretary for the Colonies, produced in the House of Lords, the papers from America. A motion was immediately made by the Earl of Chatham, for an address to his Majesty, to remove the forces from the town of Boston. He urged the necessity of this step as preparatory to the settlement of the dangerous troubles in America. The Americans, he said, would never be in a temper or state to be reconciled, they ought not, until the troops were withdrawn. "The door of reconciliation," he said, "should be opened immediately: it will soon be too late. Whoever has counselled the King to the present measures ought to answer for it at his utmost peril, and if his Majesty shall continue to listen to such counsels he will be undone; he may wear his crown, but the American jewel out of it, it will not be worth the wearing. The Americans say, that we have no right to tax them without their consent, and they say truly; representation and taxation must go together, they are inseparable. The Americans he said do not hold the language of slaves, they speak as freemen: they do not ask a repeal of our laws as a *favor*, they claim it as a *right*; they demand it, they say they will not submit to them, and I tell you the acts must be repealed; you cannot enforce them." But the motion of Lord Chatham, though urged by him with such eloquence as has seldom been heard, and though supported by Lords Camden, Shelburne, and others, who were among the wisest and ablest statesmen of the realm, was yet rejected by a large majority.²⁹

Almost at the opening of business in the Commons, numerous

²⁸ Notwithstanding the apparent hesitation of the Ministry, there is reason to believe that decisive measures had then been resolved on, in case the colonies persisted in their course. Lord North declared to Mr. Quincy (who was then in England as Special Agent from Massachusetts) that "we must try what we can do to support our authority. If we are defective in power, we must sit down contented and make the best terms we can, and nobody can blame us after we have done our utmost." In a letter to Reed, of Philadelphia, dated December 17th, Quincy declared, "I look to my countrymen with the feelings of one who verily believes that they must yet seal their faith and constancy to their liberties with blood."

²⁹ There were but 18 Lords for the motion, and 77 against it.

petitions were presented relating to American affairs. The principal trading and manufacturing towns in England, presented addresses, showing the injurious effects of the disputes with America upon the commercial interests of the country. A motion was made to refer these petitions to the committee on American papers, but an amendment was moved on the Ministerial side, that they should be referred to a separate committee, to meet on the twenty-seventh, the day *following* that appointed for the consideration of American papers. This amendment was carried by a decided vote, and thus all the petitions were virtually rejected, being given to the body which was called by Burke, "the committee of oblivion." The petition from the American Congress to the King which his Majesty had referred to the House, was directly rejected. All measures tending toward an accommodation being thus disposed of, the Minister proceeded to unfold his plan by moving a joint address to the King on American affairs. This address declared that Massachusetts was in a *state of rebellion*, and that this colony had been supported by unlawful combinations and engagements entered into by other colonies, to the great injury and oppression of his Majesty's subjects in Great Britain. It assured his Majesty of their determination never to relinquish the sovereign authority of the King and Parliament over the colonies, and requested him to take the most effectual means to enforce their obedience, and promising that Parliament would support him at the hazard of their lives and property. The motion was carried in the Commons by a large majority. In the House of Lords very animated debates occurred, but the motion for concurrence was finally carried by a very decisive vote.³⁹ By the adoption of this address it has been said, and truly,

³⁹ The Lords Richmond, Craven, Archer, Abergavenny, Rockingham, Wycombe, Courtenay, Torrington, Posonby, Cheshamley, Alington, Rutland, Camden, Ellington, Stanhope, Scarborough, Fitzwilliam, and Tankerville, protested against the address "as founded on no proper Parliamentary information being introduced by refusing to suffer the presentation of petitions against it (though it be the undoubted right of the subject to present the same;) as following the rejection of every mode of conciliation; as holding out no substantial offer of redress of grievances; and as promising support to those Ministers who had inflamed America, and grossly misconducted the affairs of Great Britain."

that Parliament "passed the Rubicon." The answer from the Throne gave assurances, that the most speedy measures should be taken for enforcing obedience to the laws and authority of Parliament. A message was also sent to the Commons informing them that an *augmentation of the forces* would be required. Soon afterwards additional measures were proposed by the Minister. On the 10th of February he moved for leave to bring in a bill to restrain the trade of the colonies of Massachusetts, Connecticut, New Hampshire, and Rhode Island, to Great Britain, Ireland, and the British West India Islands, and prohibiting these colonies from fishing on the banks of Newfoundland. In support of this measure it was said, that as the Americans had refused to trade with the mother country, they ought not to be permitted to trade with any other, and it was subsequently proposed that the restrictions should be extended to all the colonies, excepting New York, North Carolina, and Georgia. These exceptions were probably made with the view of producing disunion among the colonies. But if such was the design, it signally failed.³¹ During the pendency of this proposal in Parliament, Lord North surprised his political friends, as well as opponents, by coming forward with a "conciliatory plan" which he offered on the 20th of February to the House of Commons. This project was represented by him as an "infallible touch stone" to try the Americans; he said that if their opposition to the measures of Parliament was really founded on the principles advanced, they must agree to the present proposal, and that its rejection would be proof that their

³¹ The particular reasons for the selection of these colonies as objects of favor are not entirely clear. But the tardy appearances of the deputies from North Carolina, in Congress, and the entire lack of any representation from Georgia, may have possibly been considered. In the case of New York, the former refusal of the traders of her principal city to adhere to the non-importation agreements, could hardly have been forgotten. Beside this, New York refused, in regard to certain particulars, to accede to the recommendations of Congress. If this refusal which was made in January, was known to the Minister at the time of making his proposal, (March 12,) it was probably the principal ground of the exception in favor of this colony. But New York eventually concurred in the measures of Congress, and none of the excepted colonies were at all disposed to avail themselves of the proffered advantages; on the contrary, they rather regarded the offer as an injury.

purposes were not such as had been openly avowed. To this plan no party at first was favorably disposed, but upon further reflection or explanation, the friends of the Minister agreed to its support.³² It was finally adopted by a large majority. Other conciliatory proposals which were offered, were rejected: the "restraining bills" were passed, and the determination of the colonists between the pacific proposal of the Minister, and the threatened coercive measures, was awaited. But it was thought important that means should be used for the prevention of union and concert of action in the colonies. Early in January a circular had been directed by Lord Dartmouth to the Governors of the several colonies, in which his Majesty's pleasure was signified, that every endeavour should be used to prevent the appointment of deputies to the Congress which was proposed to be held on the 10th of May. It was supposed or hoped that a defection of some of the colonies would take place. But this was not the case. In New Jersey the Assembly had been in advance of the Minister: delegates were appointed before the circular was received,³³ and similar

* The conciliatory plan provided "that when any colony should propose to make provision according to its condition and circumstances, for contributing its proportion for the common defence, to be raised under the authority of the General Court, or Assembly of such colony, *and disposable by Parliament*, and shall engage to make provision also for the support of civil government, and the administration of justice in such province or colony: it will be proper, *if such proposal shall be approved by his Majesty in Parliament*, and for so long as such provision shall be made accordingly, to *franchise* in respect to such colony to levy any duty, tax, or assessment, except only such duties as it may be expedient to levy or impose, for the regulation of commerce; the nett proceedings of the duties last mentioned, to be carried to the account of such colony respectively." The speciousness of this plan led many to suppose that important concessions were to be offered to America, and hence the high prerogative party loudly condemned it, and thought themselves betrayed by the Minister. But this opposition was quelled by closer examination, and by the explanations that were made. It was represented by Lord North, or his confidants, that the plan would probably be rejected by most of the colonies, but would tend to disarm them; and the offer of such terms would also satisfy the people of England in regard to the course of the government.

* The circular was written on the 31st of January, and on the 24th, as before stated, the former delegates were re-appointed.

appointments were made formally in each of the colonies. The grievances which had been complained of were not redressed, and before the time for the meeting arrived, others had been added. England had attempted to assert her claims by other means than her declarations and laws. The sword had been drawn at Lexington, and war, one of the greatest of earthly calamities, was brought upon the country. Under these circumstances the second General Congress convened.

CHAPTER XX.

THE SECOND CONTINENTAL CONGRESS.—THE PROVINCIAL CONGRESS OF NEW JERSEY.—CONSTITUTION OF NEW JERSEY.

THE second General Congress convened on the 10th of May, 1775. They immediately entered upon decided action. A resolution was passed prohibiting all exportations to the neighbouring British colonies, or the fisheries on the coast. Another followed, that the colonies should directly be put in a state of defence. This was considered necessary in consequence of the actual commencement of hostilities in Massachusetts. That province was also advised, to consider the offices of Governor and Lieutenant Governor as vacant, and that a Council should be chosen by the Assembly to direct the government, until his Majesty should appoint a Governor to conduct affairs according to the charter. New York, where a body of troops was shortly expected, was advised to act on the defensive, so long as such a course could be safely maintained, but that they should not permit the erection of fortified works by the British, or the communication between town and country to be cut off. It was still resolved, that an humble and dutiful petition should be addressed to the King, asking that measures might be taken to accommodate the present unhappy disputes. The propriety of this step was much doubted by many, considering the direct rejection of previous petitions, but it was finally agreed to, as well as addresses to the people of England, of Ireland, and of the province of Quebec. In these, the attacks that had been made upon the colonies were repelled, their desire of peace upon just and constitutional grounds, was asserted, as well as their attachment to England, her laws, her people, and her King. But there was also a bold declaration of rights, and a strong vindication of former proceedings and designs.

Their final appeal was now made, and Congress proceeded to perfect the measures for the defence of the country, by making

provision for raising and organizing an army. On the 15th of June, George Washington was appointed General-in-Chief of the armies raised, or to be raised, for the defence of American liberty. To defray the necessary expenses, it was resolved that the sum of three millions of dollars should be issued in bills of credit which sum was to be apportioned for sinking, among the several colonies, in the proportion of inhabitants, but the faith of the "Twelve United Colonies" was to be pledged for its redemption.¹

On the 15th of May, 1775, the Assembly of New Jersey was convened by the Governor, for the purpose of considering the conciliatory plan of Lord North, which had been sent by a circular to the several colonies. It was recommended by the Governor in a long and elaborate address. He believed that the offers it contained were all that the colonists could justly demand or desire, and said that a happy opportunity was presented of getting rid of an unnatural contest, by only complying with an acknowledged duty. But the previous course of the Governor, had not been such as to favor his influence and argument.² Under no circumstances, however, could these have prevailed with the House on the present occasion. It was perceived that the plan submitted to them, fell far short of the demands and rights of the people. In entering upon the subject, regret was expressed by the House, that as the Continental Congress was then sitting to consider the situation of affairs in America, the present meeting had not been deferred until the sense of that body should be known, as they supposed that no one would suspect them of an intention to aban-

¹ Georgia had not yet become associated, but her accession took place in July, and the "Thirteen" then became united.

² Beside the general course of the Governor, the attention of the House was called at this time to statements purporting to come from his Excellency, in relation to the previous action of the House. A copy of the "Parliamentary Register" was produced, containing a letter from the Governor to Lord Dartmouth, in which the former represented the Assembly as having been divided in their approbation of the proceedings of the late Congress. The Assembly requested to know of the Governor whether the extract contained a true representation of the substance of the letter written by him. His Excellency complained of the course of the House in placing the extract on their minutes, and seeking to inculcate him, but denied the correctness of the extract.

Forbes, vol. 1, p. 19. *Gordon*, p. 162.

don the cause of their country.¹ But they said they had considered the proposal that had been offered, and though they wished to avoid a hasty conclusion, they could form no other opinion than that it was essentially the same that had heretofore been made; that it did not appear to be materially different from that which was presented before the passage of the stamp act; they said that America did not comply with it then, and that though they were sincerely disposed to use all proper means in order to become reconciled to his Majesty, and the Parliament of England, yet they could not comply with a proposition which they believed to be inconsistent with the privileges of freemen; nor did they want any time to consider, whether they should submit to that which in their apprehension would reduce them to a state but little better than slavery. That they might, according to the present proposal be fully and effectually taxed by their fellow subjects of Great Britain, and that perhaps to a much greater degree than before; as it seemed to require that they should raise such a proportion as Parliament should think proper, and it was impossible to tell how far the people of the colony might be involved by assent to so undeterminate a provision. "Upon the whole," they said, "though sincerely desirous to give every mark of duty and attachment to the King, and to show all due deference to the Parliament, we cannot, consistent with our real sentiments, and the trust reposed in us, assent to a proposal big with consequences destructive to the public welfare; and hope that the justice of our parent country will not permit us to be driven into a situation, the prospect of which fills us with anxiety and horror. We heartily pray that the supreme disposer of events, in whose hands are the hearts of all men, may avert the calamities impending over us, and influence our Sovereign, his Ministry, and Parliament, so as to induce them to put a stop to the effusion of the blood of the colonists, who wish always to look upon their fellow subjects of Great Britain as their brethren."

¹The conciliatory plan was afterwards brought forward in Congress, and was referred to Franklin, Jefferson, Adams, and Lee, and on the report of this committee, on the 31st of July, Congress rejected the terms as unreasonable, insidious, and unsatisfactory.

The Governor replied, and declared that he had done his duty in the case, and soon afterwards prorogued the House.

It has been stated that the convention of delegates which was held in New Brunswick in July, 1774, appointed a number of their members to serve as a general committee of correspondence. The latter body met at the same place on the 2d of May, 1775. Taking into consideration the alarming condition of public affairs, especially the commencement of hostilities in one of the colonies, the committee resolved that a second Convention would be necessary, and directed that a meeting should be called by the Chairman, on the 23d of May, to consider upon such matters as should be then brought to their notice. In accordance with the notice, delegates were again elected in the counties, and met at the time and place appointed. Eighty-seven representatives appeared, delegates being present from all the counties.⁴ The Provincial Congress (as this body was constantly styled,) proceeded, the day after their meeting, to effect an organization by the appointment of officers. Hendrick Fisher was chosen President, Jonathan D. Sergeant Secretary, and William Paterson and Frederick Frelinghuysen Assistant Secretaries. The business of the Congress was opened with a full acknowledgement of the importance and solemnity of the engagement: that it might effect the lives and properties, the religion and liberties of their constituents, and their posterity: and hence that it became them, as the representative body of a christian people, to look up to that All-Powerful Being by whom all human events were guided, and to implore his favor, and direction.⁵

⁴ There were five from Bergen, thirteen from Essex, eleven from Middlesex, seven from Morris, eight from Somerset, four from Sussex, seven from Monmouth, fifteen from Hunterdon, five from Burlington, three from Gloucester, three from Cumberland, five from Salem, and one from Cape May. [*Journal of Proceedings.*] The meetings and proceedings of this body (as well as previous meetings of a similar character, are to be carefully noticed. The people had been driven by the refusal of the Governor to call the Assembly, to an independent procedure, and this course of procedure was now continued, and thus the *Provincial Congress* came, in a great degree, to take the place of the Assembly, and the latter, as will be seen, was soon afterwards entirely suspended.

⁵ It was therefore ordered that during the session the business of each day should be opened with prayer.

The Congress then determined that the existing contest with Great Britain was of such a nature, and had arrived at such a crisis, that the present meeting had become absolutely necessary in order to provide ways and means for the security of the province; though at the same time, they declared their veneration for the person and family of his Majesty George III. They declared their approval of the acts of the late Assembly of the province in appointing delegates to the General Congress, and expressed their thanks to the House for their regard and attention to the rights and liberties of the people. But they unanimously agreed that when a Continental Congress should again become necessary, it would be most proper that the delegates thereto, should be chosen by a Provincial Congress.⁶ It was then resolved, that in the proceedings of the Congress, each county should have one vote. At an early period, a written message was directed to the Continental Congress then sitting, expressing a willingness to co-operate in any undertakings or acts for the good of the country, and asking advice and assistance. The reply of the Congress imported, that the body was not prepared at the time, to give any specific directions, but that a correspondence would be willingly maintained, and that advice would be given, as occasion might arise. The previous resolution of the General Congress for withholding exportations for the supply of the British fisheries on the coast, was adopted. A communication was opened with Connecticut and New York; an individual,* a part of a committee appointed by the former State, being then in attendance, and a letter being received from the latter; assurances were given by the Congress that they would heartily concur with the other colonies in all such measures as were adopted for the defence of the rights of America.

The final determination of America to maintain her position by forcible resistance was foreseen, and provided for. The Congress declared, that taking into consideration the cruel and arbitrary measures of the British Parliament and Ministry for the purpose

* The independent measures that had formerly been resorted to, were here expressly approved, and a similar course of action was resolved upon for the future.

of subjugating the American colonies, and being apprehensive that all pacific measures for the redress of grievances would prove ineffectual, they thought it necessary that the inhabitants of the province should forthwith be properly armed and disciplined, for defending the cause of American freedom. A plan for regulating the militia was therefore agreed to, and an ordinance was passed for raising the necessary funds. The sum of ten thousand pounds was to be raised, by a levy within the several counties, the apportionment and collection of which was to be made according to a rate and manner prescribed.⁸

A General Committee of Correspondence, consisting of fourteen persons, was then appointed, to whom power was given, or any three of them, acting in conjunction with the President or Vice President, to call a meeting of the Congress. After a session of eleven days, the Congress adjourned.

Notwithstanding the decided measures that were adopted by the Continental Congress, and in the several colonies, for resisting the demands of Great Britain, a final separation from that country

⁸ In order to engage the people generally in support of the measures agreed upon, a form of association was prepared. It provided, that the subscribers, freeholders and inhabitants of the township of —, in the county of —, and province of New Jersey, having long viewed with concern the avowed design of the Ministry of Great Britain to raise a revenue in America; being deeply affected with the cruel hostilities already commenced in Massachusetts Bay for carrying that design into execution; convinced that the preservation of the rights and privileges of America depends under God, on the firm union of its inhabitants; do with hearts abhorring slavery, and ardently wishing for a reconciliation with our parent State on constitutional principles, solemnly associate and resolve, under the sacred ties of virtue, honor, and love to our country, that we will personally, as far as our influence extends, endeavour to support and carry into execution whatever measures may be recommended by the Continental and our Provincial Congress, for defending our constitution and preserving the same inviolate. We do also associate and agree as far as shall be consistent with the measures adopted for the preservation of American freedom; to support the Magistrates and other civil officers in the execution of their duty agreeable to the laws of this colony; and to observe the directions of our committee, acting according to the resolutions of the aforesaid Continental and Provincial Congress; firmly determined by all means in our power, to guard against those disorders and confusions to which the peculiar circumstances of the times may expose us.

was not yet in view. The Americans were resolved to maintain their rights by every means at their command; yet independence was not contemplated as their ultimate object. But their immediate purpose was promptly and vigorously pursued. Even during the sitting of the General Congress, active military operations were commenced. Early in May, 1775, an enterprise was planned in Connecticut, to take the fort at Ticonderoga, and secure the military stores at that place, for the use of the colonies; and this plan was carried into execution under the direction of Colonels Allen and Arnold. Near the last of May, Generals Howe, Clinton, and Burgoyne arrived at Boston with new forces, to compel the submission of the colonists, but the battle of Bunker Hill, which took place on the 17th of June, gave evidence that "submission" was not to be easily enforced.

The Provincial Congress of New Jersey again met on the 5th of August. Nearly the same number, and with a few exceptions, the same individuals were present as before. Regulations were now adopted to ensure the collection, and the proper employment of the funds which had been ordered to be raised, and also for the fuller organization and establishment of the military force. Fifty-four companies, consisting of sixty-four men each, were to be raised, and the proportionate number to be supplied by each of the counties was determined. Two Brigadier Generals were also appointed.* Penalties were proscribed in cases of refusal to enrol in the service, or to attend at the times and places of mustering; but it was resolved that "as there are a number of people within this province whose peculiar religious principles will not allow them in any case to bear arms, this Congress intend no violence to conscience, and therefore would earnestly recommend to all such persons to contribute the more liberally in these times of universal calamity, to the relief of their distressed brethren in the several colonies, and to all other services for their oppressed country, consistant with their religious profession."¹⁰

A most important measure of the Congress was that for secur-

* One only, Philemon Dickinson, was appointed at first, but soon afterwards William Livingston was named as the colonel.

— This liberal provision was afterwards partly annulled by more rigid regulations.

ing the continuance and action of the body. It was declared to be expedient, at a time when the province was likely to be involved in all the horrors of a civil war, and when a consequent necessity would exist to increase the burdens of the people by taxes, that the inhabitants should have frequent opportunities to renew their choice and approbation of their representatives. It was therefore resolved, that the inhabitants in each county *qualified to vote for Representatives in the General Assembly*, should meet (at places directed,) on the 21st of September next ensuing, and there elect by plurality of voices, any number of persons not exceeding *five* who were to be *substantial freeholders*, and who should be empowered to represent the county in Provincial Congress, which Congress should convene on the 3d of the succeeding October. It was also resolved, that during the continuance of the disputes between Great Britain and America, there should be a new choice of deputies *yearly*, in each county, on the third Thursday in September, and that at the same time the inhabitants as aforesaid, should elect a number of freeholders to constitute a county committee of observation and correspondence, with full power as well to superintend the necessary business of the county, as to carry into execution the resolutions and orders of the Continental and Provincial Congress; and also that similar action should be taken in each of the townships within the county. A Provincial Treasurer was then appointed,¹¹ and a Committee of Safety was chosen, to act as an executive body during the continuance of the recess of Congress.¹² The Congress then adjourned to the 20th of the ensuing September. The proceedings of the meeting in September have not been preserved, but the members elected in that month in accordance with previous resolutions, assembled on the 3d of October, pursuant to appointment. The number of members was reduced, agreeably to the regulations upon the subject already noticed. Samuel Tucker was chosen President, Hendrick Fisher, Vice President, and John Mehelm, upon general

¹¹ Jonathan D. Sergeant.

¹² The Committee of Safety were Hendrick Fisher, Samuel Tucker, Isaac Pearson, John Hart, Jonathan D. Sergeant, Azariah Dunham, Peter Schenck, Enos Kelsey, Joseph Borden, Frederick Freunghuysen, and John Schureman.

Ipswich, p. 24.

request, consented to act as Secretary, until another should be chosen.¹³ This new body, like the former one, resolved, that its daily proceedings should be opened with an act of religious service; that supplication should be made to Almighty God that he would be pleased, so to influence and direct the counsels of America and Great Britain, that peace, unanimity, and harmony might be re-established between them, upon a permanent foundation.

At this session the attention of Congress was principally directed to the regulation of military affairs. A communication was received from the Continental Congress, which was then in session, (having convened on the 5th of September,) which stated, that it had become absolutely necessary to raise several new battalions, and recommended that *two* should be raised in New Jersey, and blank commissions were forwarded for captains and subaltern officers. The recommendation was complied with, though some difficulty occurred in relation to one particular.¹⁴

The mode of raising funds to defray the increasing expenses of the colony was a difficult but an important part of the business of the Congress. The amount already ordered had not been fully received, and petitions were presented from different places urging that means might be adopted to ensure its collection. During the pendency of this subject, application was made to the Continental Congress for information, whether it would be consistent with the measures adopted by that body, to allow the

¹³ Afterwards William Paterson was appointed Secretary, but he acquainted the Congress that his business and circumstances would not admit of his serving, and John Curry, a member from Salem, was appointed.

¹⁴ The Provincial Congress declared that they were animated with equal affection to the common cause of America, but they were desirous to know whether the right of nominating field officers was not in them, according to the privileges granted to other colonies; and they said that the previous appointment of field officers would tend to expedite the service. The Continental Congress replied, that it was necessary the battalions should be raised with all expedition, and they were not then prepared to decide upon the question of the appointment of field officers. At a subsequent time, (September 16th, 1776,) this point was decided. The General Congress determined that the appointment of all officers, and filling up vacancies, *except general officers*, should be left with the colonies.

provinces the use of such sums of the continental money as they might require, upon the faith of the province, and if so, upon what terms. The General Congress decided, that the public exigencies did not admit of loans from the Continental Treasury, to any of the colonies. It was then resolved, that the sum of thirty thousand pounds proclamation money should be emitted in bills of credit, and an ordinance was passed directing the mode of issuing and of sinking the amount. An ordinance was also passed for compelling the payment of the ten thousand pound tax. A question touching an extension of the right of suffrage was also brought to the notice of the Congress. Petitions were presented from different parts of the province, praying that householders and others, not freeholders, who should pay their proportion of tax, should be admitted to vote for deputies to the Provincial Congress. After some consideration and discussion, it was determined, that a final decision should be deferred until the next meeting of the Congress, in order that the sense of the people might be more generally known upon the subject. A committee of safety, consisting of the President, Vice President, and eleven others, were appointed to act during the recess, and the Congress then adjourned to meet at New Brunswick on the 1st of April, 1776, unless sooner convened by a call of the committee. The committee above mentioned continued to be actively engaged during the period of the recess. Upon information communicated to them from different quarters, proceedings were entered upon against individuals who were charged with the commission of acts opposed to the liberties of the country. The General Congress had advised in respect "to those unworthy Americans who were so regardless of their duty to their Creator, their country, and their posterity, as to take part with our oppressors, and, influenced by the hope or possession of rewards, should strive to recommend themselves to the bounty of administration by traducing the principles and conduct of the friends of American liberty, and opposing every measure for its preservation; that the different assemblies, conventions, and committees or councils of safety in the colonies, should take the most speedy and effectual measures to restrain the wicked practices of these men." In accordance with this recommendation, the committee

of safety in New Jersey, caused several individuals to be brought before them; some were disarmed, fined, and ordered to give security for their behaviour in future, and others were ordered to be kept in confinement until suitable contrition should be manifested for their offences.¹⁵

Whilst these proceedings were carried on by the people and their immediate representatives, the Governor of New Jersey continued to exert himself in opposition: this was done both in his intercourse with public bodies, and also with individuals. "On the 16th of November, 1775, he convened the General Assembly. The principal legislative authority of the province was yet with this body in name, although in fact the power had nearly passed into other hands. At the opening of the session the Governor remarked to the House, that he had lately said so much concerning the present unhappy state of affairs, and the destructive measures which had been adopted, that he should not endanger the peace of the session by a farther discussion of the subject. But he thought it necessary that they should be informed "that his Majesty laments to find his subjects in America so lost to their own true interest as to have rejected the late overture (the conciliatory plan;) but that as they have preferred engaging in rebellion, it had become his Majesty's duty, and was his firm resolution, to pursue the most vigorous efforts to bring them to obedience." His Excellency said, that he was conscious of having the true interest of the people at heart, and that he had resolved, contrary to the advice of his friends, to remain in the province, as his departure would probably subject the colony to the charge of open rebellion. But he desired the Assembly, in case they were not able or disposed to answer for the safety of himself and the other officers of the Crown, that plain information of their danger might be given. "Sentiments of independence," he said, "are openly avowed, and essays are appearing to ridicule the people's fears of that horrid measure; it is high time that every

¹⁵ Journal of Proceedings, pp. 135-6.

"A correspondence of some warmth was carried on between the Governor and Lord Sterling in reference to the appointment of the latter to the command of a regiment of militia.

Life of Lord Sterling, p. 114.

man should know what he has to expect." The House replied, that they truly lamented the situation of public affairs, and that there was so little prospect of a removal of the grievances under which the country was laboring. That they desired nothing with greater anxiety than a reconciliation with the parent state on constitutional principles, but that they were greatly mistaken if the proposal lately offered, could have been accepted by them without a violation of the duty they owed to their constituents. They assured his Excellency that they could not imagine that there was any reason to fear insult or injury, or that he or other officers need be apprehensive of danger. That they knew of no sentiments of independency that were openly avowed, and that they approved of no essays urging to such a measure, and considered it their duty to promote peace, order and good government.¹⁷ The Assembly proceeded to transact the ordinary business that presented, and continued in session until the 6th of December. The House was then prorogued by the Governor, to the 3d of January next ensuing. But the Assembly never again convened. A new order of things was now taking place, and the institutions which had been established under royal authority, were soon to be entirely and forever abolished.¹⁸

¹⁷ Two days before, (November 28th.) the House had resolved, upon petitions presented on the subject, "that reports of independency, in the apprehension of this House, are groundless. That it be recommended to the delegates of the colony to use their utmost endeavours for obtaining a redress of American grievances, and for restoring the union between the colonies and Great Britain upon constitutional principles. That the said delegates be directed not to give their assent to, but utterly to reject any proposition, if such should be made, that may separate this colony from the Mother Country, or change the form of government thereof.

Votes, vol. 4, p. 18.

¹⁸ During the period of agitation that has been noticed, some concessions had been made through the legislature in favor of the privileges and interests of the people in New Jersey. In the year 1768, an extension of representation was gained by the confirmation of an act for giving representatives to the counties of Morris, Cumberland, and Sussex. By this measure the number of members in the Provincial Assembly was increased from 24 to 30. At the last sitting of the Assembly, the Governor communicated the royal approbation of an act for the raising by loan, of 5000*l*. of credit to the amount of one hundred thousand pounds. The grant had been long solicited, but the laws passed by the Assembly had been

In consequence of communications from the Continental Congress, the committee of safety summoned the Provincial Congress of New Jersey, which accordingly met on the 31st of January, 1776. A principal part of the object of the meeting was to make provision to meet the requisitions for additional troops. The General Congress having been informed of the designs of the British Ministry to make an attack upon the colonies by way of Canada, had resolved upon an attempt to anticipate the design, by taking possession of the strong posts in that province. The attempt was made, but was not fully successful, and it became necessary that additional forces should be raised, of which New Jersey was required to furnish a part.¹ The Provincial Congress accordingly ordered that enlistments should be made, and individuals were recommended as suitable persons to serve as field officers, and the other officers were at once appointed. The extension of military preparations involved a necessity for additional means of support: hence the ordinance formerly passed for the issue of thirty thousand pounds in bills of credit, (which bills were not yet printed,) was re-considered and modified: and

constantly rejected. The Assemblies were not willing to establish a loan that would render the officers of government independent of the legislature, but this had been desired by his Majesty, and hence a disagreement on this point had been one of the causes of the frequent rejection of the loan bills. In communicating the royal assent at this time, Lord Dartmouth informed the Governor, that he was directed by his Majesty to say, that it would have been more agreeable to him, if the Assembly, instead of a general appropriation of the interest of the loan to the support of government in such manner as should be directed by future acts, had thought proper to make a settlement during the existence of that loan, upon the officers of government, of salaries more suited to their respective offices than they then received; and if a specific portion had been appropriated to the building houses for the Governors; and the Assembly were required in his Majesty's name to make provision accordingly. The Assembly replied, that though they entertained the most grateful sense of the attention shewn to their wishes in the assent to the loan act, and were sincerely disposed to grant his Majesty's requisitions, yet they did not think it prudent at the time, to go into any increase of the salaries of the officers; nor did they apprehend that it would be beneficial to settle them for a longer period than usual, or that it would then be expedient to erect billings for the Governor and assembly.

¹ New Jersey was required to furnish another battalion.

it was now resolved that the sum of fifty thousand pounds should be issued. Full provision was made for sinking these bills by instalments, within specified times, by taxes to be levied within the counties, upon real and personal property, including all mortgages, bonds, bills, notes at interest, and slaves.²⁰

On the 14th of February, the Congress proceeded to elect delegates to represent the province in the Continental Congress, and William Livingston, John Dehart, Richard Smith, John Cooper, and Jonathan D. Sergeant were unanimously chosen. They were chosen to serve for one year, or until others should be appointed, and it was resolved that they, or three or more of them, should have full power to consent and agree to all measures which the Continental Congress should deem necessary, and that the province should be bound to execute to the utmost of its power all resolutions which the said Congress might adopt.

The question respecting the right of suffrage, which had been agitated at the former sitting, was now again presented. Petitions in favor of an extension of the right, were offered from different parts of the province, and also a number of counter petitions. The subject was fully considered and was finally decided by putting the question "whether *every person* of full age who hath, immediately preceding the election, resided one whole year, in any county of the colony, and is worth at least fifty pounds in real and personal estate, shall be admitted to vote in the county wherein he resides, for representatives in Provincial Congress, or not? It was decided in the affirmative, nine counties voting for, and four against it.²¹

²⁰ Nine thousand five hundred bills were to be struck, each of the value of three pounds, ten thousand each of the value of one pound ten shillings, six thousand six hundred and sixty-seven, each of the value of fifteen shillings, and five thousand, each of the value of six shillings. The bills to be in form as follows: "This bill by an ordinance of the Provincial Congress, shall pass current in all payments within the colony of New Jersey for ——. Proclamation money, dated the 12th of February, 1776."

²¹ The ordinance as finally prepared and adopted, prescribed "that all freeholders qualified to vote for Representatives in General Assembly in this colony, who have signed the general association recommended by this Congress; and all other persons of full age who immediately preceding the election shall have resided for the space of one year in any county of this colony and are worth at least fifty pounds proclamation money in personal estate and have signed the

Another measure followed upon the determination of this question. It was deemed advisable that the people of the colony admitted to vote under the present regulations, should have an opportunity to participate in the choice of representatives; and it was therefore resolved, that there should be a new election of deputies to serve in Provincial Congress, for every county of the colony, on the 4th Monday in May, yearly, and every year, during the continuance of the present troubles. Special regulations were made in regard to the mode of conducting the elections. It was also resolved, that in all future meetings of the Congress, the votes should be taken from the members individually, and not from the counties collectively, and that the Congress should have power to judge of the qualifications of its own members, and to reject any deputy or deputies for sufficient cause. It was then resolved, that "on the 4th Monday in May next, this Congress shall be, and is hereby dissolved; any thing in the ordinance of the late Provincial Congress, to the contrary, notwithstanding."

During this period, important changes were taking place in the relations between the colonies and Great Britain. It has been seen that notwithstanding their vigorous prosecution of measures of resistance, the colonists did not design a final separation. Independency was not their object. But a change of opinion and feeling was consequent upon the march of events. In September, 1775, the final petition of the General Congress to the King, was rejected, and in a manner by no means calculated to soften or conciliate.²² An early call of Parliament followed. In his address, the King accused the colonists of revolt, hostility, and rebellion, and declared that the rebellion was carried on for the purpose of establishing an independent empire. To prevent this design, he said, the most decisive measures were required, and the aid of Parliament was invoked. Parliament readily answered. About the close of the year 1775, an act was passed prohibiting all trade with the colonies, and authorizing the capture and condemnation

general association as aforesaid, shall be admitted to vote in the county where he resides, for deputies to the Provincial Congress." *Journal*, p. 728.

²² Mr. Penn, who presented the petition, was informed that no answer would be given.

of all American vessels and their cargoes, and of all other vessels found trading in any port or place in the colonies, as if the same were the vessels and effects of open enemies; and the vessels and property thus taken were vested in the captors, and the crews were to be treated *not as prisoners, but as slaves*. Nearly at the same time agreements were entered into with certain German Princes, particularly the Landgrave of Hesse Cassel, taking into pay 17,000 troops, to be employed against the Americans, and an additional force of 25,000 men was also to be sent over. Such measures as these were eminently calculated to exasperate and alienate the Americans, and to dispose them to a final separation from the mother country; and such a disposition soon began to be manifested. During the winter of 1775-6, several publications appeared, in which independence of England was openly proposed and urged.²³ The measure soon began to be generally considered by the people, and not long afterwards received the sanction of several public bodies. Whether it was distinctly contemplated at the time by the Provincial Congress of New Jersey, is uncertain, but the delegates in Continental Congress were authorized by the instructions of the 14th of February, to join in the general voice of the colonies, and pursue such measures as might be deemed most beneficial for the public good. On the 22d of April, the Convention of North Carolina empowered their delegates to concur with others *in declaring independency*. Early in May, the Convention of Virginia unanimously *instructed* their delegates to propose to the General Congress to declare the united colonies, free and independent States, absolved from allegiance and dependence upon the Crown or Parliament of Great Britain.

The action of the Continental Congress was in unison with the sentiments expressed in the colonies; a series of measures were resolved upon by that body, tending toward a final separation from the mother country. The "prohibitory laws" of Parliament were answered by a direction of Congress, that reprisals should be made both by public and private armed vessels; and the ports of the country were opened to all the world, except the dominions of

²³ Among these publications, one entitled "Common Sense," written by Thomas Paine, was supposed to have been most influential.

Great Britain. On the 10th of May, 1776, Congress recommended to the Assemblies and Conventions of the colonies, "to adopt such governments as should, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and America in general." In the preamble to this resolution, (adopted five days later,) it was declared, that "it was irreconcilable to reason and good conscience for the colonists to take the oaths required for the support of government under the Crown of Great Britain, and that it was necessary that *every kind of government under the Crown, should be suppressed.*"

In New Jersey action was so promptly taken upon this subject, that an independent government was formed, even in advance of the declaration of independence by the General Congress. It has been seen that a resolution was adopted by the Provincial Congress for a new election of delegates on the 4th Monday in May, 1776. Representatives were accordingly chosen at that time in all of the counties, and the members convened, according to appointment, at Burlington, on the 10th of June. Sixty-five members were in attendance, five from each of the thirteen counties. On the 11th they met and proceeded to the election of officers, when Samuel Tucker, a member from Hunterdon, was chosen President, and William Paterson of Somerset, was appointed Secretary. The proceedings of this body were of the highest importance, not merely in reference to the immediate, but also to the ultimate interests of New Jersey. A form of government was devised and adopted under which independence was achieved, and which was afterwards continued, until a high degree of prosperity and happiness was reached by the people.⁷¹

At an early period, a communication was received from the Continental Congress, stating that thirteen thousand eight hundred troops were to be employed to reinforce the army of New York.

⁷¹The precise character of the body by which the first constitution of New Jersey was framed, has been a subject of much inquiry and doubt. It is here seen that it was *the Provincial Congress*, a body quite distinct from the Assembly. It had not been chosen for the particular purpose of forming a constitution, but entered upon it, in pursuance of the recommendation of the General Congress, and in compliance with petitions from the people, together with the sense of the body itself, as to the necessity of the measure.

of which number, three thousand were requested from New Jersey. This request was complied with; an ordinance being passed for the purpose on the 14th. On the same day, a proclamation made by Governor Franklin, was taken up for consideration. Probably with a view of obstructing the measures that were in progress, his Excellency had issued a proclamation in the name of the King, appointing a meeting of the General Assembly of the province, on the 20th of June. On the 16th the Provincial Congress resolved "that in the opinion of this Congress, the said William Franklin, by such proclamation has acted in direct contempt and violation of the resolve of the Continental Congress of May last."²⁵ It was further resolved, that in the opinion of this Congress, "the said William Franklin has discovered himself to be an enemy to the liberties of this country, and that measures ought to be immediately taken for securing his person, and that from henceforth all payments of money to him, on account of salary, or otherwise, should cease."²⁶ Petitions were received from the inhabitants in

²⁵ Reference was here made to the resolution before noticed, that it was necessary that all authority *under the Crown* should be suppressed.

²⁶ The General Congress had recommended to the colonies to arrest and secure every person whose going at large would, in their opinion, endanger the safety or liberties of the country. In pursuance of this recommendation, and of their own resolution, an order was issued to Colonel Nathaniel Heard, of the Middlesex battalion, directing him to wait on Governor Franklin and require his parole not to depart from certain places mentioned (the choice of which was to be left to himself,) and in case he should refuse to sign the parole, he was to be put under strong guard and kept in custody until the further orders of Congress. A communication was received from Colonel Heard on the 17th of June, informing the Congress that he had waited on the Governor and requested him to sign the parole, which he absolutely refused to do, and forbade the officer at his peril to carry the order into effect. A guard of sixty men was then placed around the house and the further orders of Congress awaited. The Congress ordered that he should forthwith be brought before them. At the same time, a communication was addressed to the General Congress, informing that body of the conduct of the Governor, and of the proceedings that had been taken in the case, and requesting their advice and support. To this communication a reply was made in which the General Congress recommended, that the examination of the Governor should be proceeded with, and that if the Provincial Congress should be of opinion that the Governor should be confined, the Continental Congress would direct the place of confinement, they concurring in opinion

different parts of the province, praying that *a new mode of government* might be established, and on the 21st a resolution was adopted "that a government be formed for regulating the internal police of this colony, pursuant to the recommendation of the Continental Congress of May last." This resolution was passed by a vote of 54 to 3. On the 22d, the Congress proceeded to elect delegates to represent the colony in the Continental Congress; they were chosen for one year, or until others should be appointed. Richard Stockton, Abraham Clark, John Hart, Francis Hopkinson, and Dr. John Witherspoon were chosen. They were empowered and directed to join with the delegates of the other colonies, in the most vigorous measures for supporting the just rights and liberties of America, and also, if they should think it necessary and expedient, *to join in declaring the united colonies independent of Great Britain*; to enter into a confederacy for union and common defence, and make treaties with foreign nations; and to take such other measures as might seem necessary for these great ends; it being promised that they should be supported with the whole force of the province. But they were instructed, that whatever confederacy they should enter into, the regulation of the internal police of the province was to be reserved to the provincial legislature. On the same day (the 24th,) the subject of the forma-

with the Provincial Congress, that he should not be confined in New Jersey. The Governor was brought before the Congress on the 21st of June, but he refused to answer the questions that were put to him, and denied the authority of the body, which, he said, had usurped the King's government in the province; whereupon the Congress resolved that as he appeared to be a virulent enemy to the country, he should be confined in such place as the Continental Congress should direct. Soon afterwards that body transmitted a resolution that Governor Franklin should be sent under guard, to Governor Trumbull, of Connecticut, who was desired to take his parole, and if he should refuse to give his parole, that he should be treated according to the resolutions of Congress respecting prisoners. This order was executed, and Franklin remained a prisoner in Connecticut until the end of the war, when he sailed for England. He resided in that country until his death, enjoying a pension from the government. Besides his general course in New Jersey, the feeling against him was increased in consequence of letters that he wrote to England concerning the transactions in the province, some of which letters were intercepted.

See Life of Lord Sterling, p. 121.

tion of a new government was again taken up, and a committee consisting of Messrs. Green, Cooper, Sergeant, Ogden, Elmer, Hughes, Covenhoven, Symmes, Condict, and Dick, was appointed to prepare a draught of a constitution. Two days afterwards (the 26th,) the committee reported a draught, which was held under consideration, in committee of the whole, until the 2d of July, when it was adopted by the house upon the question, "whether the draught of the constitution formed on the report of the committee of the whole, be confirmed *now*, or deferred for further consideration?" Twenty-six members voted "now," and nine "for deferring." The instrument was thus adopted on the 2d of July, 1776, two days before the declaration of independence by the Continental Congress. But the constitution of New Jersey, though it provided for the establishment of a government under popular authority, fell somewhat short of a full assertion of independence. It contained a clause providing, that if a reconciliation should take place between Great Britain and her colonies, the instrument should become null and void; but otherwise should remain in full force and virtue. This provision, however, was not satisfactory to the whole of the body, and the day after the adoption of the instrument, a question was taken, whether it should be printed immediately, or the printing be deferred for a few days, in order to reconsider in a full house the propriety of the clause just mentioned. It was decided by a reduced majority, in a very thin house, that it should be printed at once, and distributed among the people. Had there been but a brief delay, there is every reason to believe, that this single mark of a dependent relation would have been wholly removed. Probably, however, the reservation exerted no influence upon subsequent action.²⁷

The constitution now adopted, contained an assertion of most important principles in government. In the preamble it was declared, that all the constitutional authority ever possessed by the King of Great Britain over the colonies, was, by compact, derived

²⁷ Gordon attributes the introduction of this clause to the influence of President Tucker. He says "the door of retreat was kept open by the fears of the President, who, a few months after, claimed the clemency of the enemy, with whom, this clause gave him an interest."

from the people, and held for their common interest; and that as allegiance and protection were reciprocal ties, each equally depending upon the other, and as George the Third, the King of Great Britain, had refused protection to the people of the colonies, and attempted to subject them to an absolute rule, and made war upon them in the most cruel and unnatural manner, all civil authority under him was necessarily at an end. This declaration went to the entire subversion of the former pretensions of the Crown; contrary to the claim that had been frequently advanced, that government might be established, or modified, or suspended, according to royal discretion; it regarded the authority of the King in the colonies, as elsewhere, as being derived from the people, and held upon the condition that it should be used for their benefit. And this principle was now to be acted upon. The King, in consequence of an abuse of the authority he held, having forfeited all claim to allegiance and obedience, the people assumed the right of determining and acting for themselves. Hence it was declared, that "we the representatives of the colony of New Jersey, having been elected by all the counties in the freest manner, and in Congress assembled, have, after mature consideration, agreed upon a set of charter rights, and the form of a constitution." In framing the instrument, it may be, that the great principle already mentioned, may not in all respects have been fully maintained; it may be that a degree of authority was given to government, that would seem not perfectly consistent with the theory of popular rights; yet a plan was devised that was found to be little objectionable in its practical working, that admitted of the enjoyment of a full measure of liberty, and of the attainment of a high degree of prosperity.

The constitution contained some provisions directly restrictive of the action of government. No person should be deprived of the privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience, nor under any pretence be compelled to attend any place of worship contrary to his own faith and judgment; nor should any be obliged to pay tithes, taxes, or other rates for the purpose of building or repairing any church, or for the maintenance of any ministry, contrary to what he should believe to be right, or have engaged to support. There should be no establishment of any one religious sect in preference to an-

other; nor should any *Protestant* inhabitant of the colony be denied the enjoyment of any civil right, merely on account of his religious principles. The inestimable right of the trial by jury was to remain as a part of the law of the colony, without repeal, forever. Limitations were also laid down, in the oath or affirmation to be required of the members of the legislative department of government.²⁸

The government of the province was vested in a Governor, Legislative Council, and General Assembly. The Council and Assembly were to be chosen yearly by the people; one member of Council, and three members of the Assembly in each of the counties; but the number of members of the Assembly might be changed by the voice of a majority of the Council and Assembly, as might be judged equitable and proper, provided that the whole number should not be less than thirty-nine. The members of Council were to be inhabitants and freeholders in the counties in which they were chosen, and to be worth at least one thousand pounds proclamation money of real and personal estate in the county; and the members of the Assembly were to be inhabitants of the county, and worth at least five hundred pounds proclamation money in real and personal estate. All the inhabitants of the colony who were of full age, and worth fifty pounds clear estate in the county, and who had resided therein for twelve months before the election, were to be entitled to vote for Representatives.²⁹ The Assembly were empowered, when met, to choose

²⁸ The members of both houses were to be required, before taking their seats, to take an oath or affirmation, not to assent to any law, vote, or proceeding that should appear to them to be injurious to the public welfare, nor any that should be contrary to the provision for an annual election of members of the Legislature, or for the trial by jury, or for a free toleration in respect to religion and worship.

²⁹ The property qualifications required of the electors and the elected, was a part of the constitution that has exposed it to objection. The subject, however, had been introduced and canvassed in part in former meetings of the Provincial Congress, and the provisions inserted in the constitution, were nearly in accordance with previous resolutions, and were probably as liberal as opinion would warrant at the time. But they were found to be too strict for a subsequent period, and relief was obtained by a stretch of authority on the part of the Legislature, and by the

a Speaker, and other officers, to be judges of the qualifications of their own members, sit on their own adjournments, prepare bills to be passed into laws, and to empower the Speaker to call a meeting when any unusual occurrence should render it necessary.

The legislative Council were empowered to prepare bills to pass into laws, and have other like powers as the Assembly, and in all respects to be a free and independent branch of the legislature, only, that they were not allowed to prepare or alter any money bill; this was the privilege of the Assembly alone.³⁰

The Council and Assembly jointly at their first meeting after each annual election, were, by a majority of votes, to elect "some fit person" within the colony, to be Governor.³¹ The Governor was to continue in office for one year, and be the constant President of the Council, and have a casting vote in their proceedings, but a Vice President was to be chosen by that body, to act in the absence of the Governor. The Governor, or in his absence, the

sanction of general custom. The qualification, as regards the *elected*, ceased to be much regarded, and it was evaded as to the *electors*, by an enactment (passed in June, 1820,) that all persons who should have paid a county tax, and whose names were enrolled on the tax list, should be deemed and taken to be worth fifty pounds clear estate. At the same time, the words, "all the inhabitants" were explained to mean, the *free white male* citizens of the State of the age of twenty-one years.

³⁰ This restriction upon the action of the Council, has been attributed to "haste and confusion of ideas." It is supposed to have been copied from the British government, under which the right to grant money is claimed by the Commons, because the other branches of the legislature are presumed to have an interest, and to be subject to an influence, foreign to the mass of the people. But here the Council, like the Assembly, being chosen by the people, no reason for such a distinction could exist. To an extent, the objection is well founded; yet the Assembly might be supposed to stand as the representatives of the people, in a somewhat fuller and nearer relation than the Council, and therefore the distinction mentioned, if not necessary, can yet hardly be considered as so entirely groundless, as to warrant the charge of haste and confusion.

See Gordon, p. 183.

³¹ The direct election of the Executive by the people themselves, is the mode of appointment which modern opinion and usage have sanctioned. But the comparative advantages even of an indirect election by the people, over an appointment by the Crown, the mode that had so long prevailed, seemed to be sufficient to satisfy the Congress, and perhaps to satisfy the people, at the time.

Vice President was to exercise the supreme executive power, to be Commander-in-Chief of all the military forces of the province, and also, to be Chancellor of the colony, and Ordinary or Surrogate General. Three or more of the Council were to be a Privy Council to advise at all times with the Governor when he should think proper to consult them.

The Governor and Council, seven whereof were to form a quorum, were to be a Court of Appeals in the last resort, and to possess the power of granting pardons to criminals after condemnation. Other officers of the judicial department of government were to be appointed by the Council and Assembly, as the Judges of the Supreme Court, Judges of the Inferior Court of Common Pleas in the counties, Justices of the Peace, and the Clerks of the several courts, and also the Attorney General. The term of office of the several judicial officers was determined, but with a provision allowing their re-appointment. They were to be commissioned by the Governor, or the Vice President of Council.³²

The Council and Assembly were likewise to appoint a Secretary of State, and Treasurer, and the field, and general militia officers. Sheriffs and Coroners were to be elected by the people in the several counties, and inferior officers of the militia, by the respective companies.

The Council and Assembly were to have power to make the Great Seal of the colony, which was to be kept by the Governor or the Vice President of Council; it was to be called the "Great Seal of the Colony of New Jersey." In order to obviate delay and confusion, it was provided, that all the laws of the province contained in an edition of the laws that had lately been published, should be, and remain in full force, until altered by the legislature, such only excepted as were incompatible with the provisions of the constitution itself; and that the common law of England, as well as so much of the statute law as had heretofore been practised, should remain in force until altered by act of the legislature, such

³² The comparative advantages of the different modes of appointing the officers of the judicial department are yet not determined, but common opinion continues to sanction an appointment by some action of the other departments, in preference to a popular choice.

parts only excepted as were repugnant to rights and privileges contained in the constitution.

With the many excellent provisions in this instrument of government, there were also obvious defects. There were errors and defects not only in the omission of needed restraints, but in the authority that was actually conferred. The restrictive articles, though highly important in character, were not sufficient in number or reach, to give full security to the people against the danger of an excess of power. Authority was also given to the government, especially to the legislative department, that might, with greater propriety, have been left to the people themselves; this was especially the case in regard to the choice of the executive officers. An immediate choice by the people would have been more in accordance with the theory of popular government, and would also have been attended by important practical advantages. The legislative bodies would thus have been freed from the difficulties and dangers that arise in appointing to office. An unusual degree of integrity, firmness, and wisdom would be required, to prevent the course of legislation from being sometimes affected, by influences which in this manner are brought into action.

The *distribution of powers* in the constitution was also defective. The Governor was made at once an executive, legislative, and judicial officer. Whilst he exercised the supreme executive authority, he was authorized to preside in one of the legislative houses, and to vote therein, and at the same time, as Chancellor, and as the head of the Court of Appeals and of Pardons, he acted as a principal judicial officer of the government.³³ In the case of the members of Council, there was also a singular commingling of duties and of powers. They were chosen principally as legislators, and the election would frequently be made with but little reference to their acquaintance with judicial proceedings; and yet as members of the Court of Appeals, a court of the last resort,

³³ These objections were somewhat lessened in actual practice. The ordinary duties of the Governor as chief executive officer, were not numerous or difficult, and he seldom participated directly in legislative proceedings; usually the most important of his duties were those of a judicial character, and the choice of the officer came to be made, in a great degree, with a view to his fitness in this respect.

they were empowered and required to decide upon cases, which the highest judicial authorities had formally adjudged. The entire provision in relation to the judicial department, indeed, was greatly imperfect; excepting the mere designation of certain officers, and the determination of the periods of office, almost the whole was left to the will of the legislative bodies. Yet in considering the circumstances of the formation of this instrument, it would seem to be a matter of surprise, that the deficiencies and faults of the plan were not greater, rather than that any should be found to exist.

A regulation similar to that which was made for the continuance of laws, was also adopted in relation to officers. It was resolved, in order to prevent a failure of justice, that all Judges, Justices of the Peace, Sheriffs, Coroners, and other inferior officers of the late government within the colony, should proceed in the discharge of their several offices, under the authority of the people, until the intended legislature and the several officers of the new government should be settled; all officers having respect to the constitution of New Jersey as lately ordained, and the orders of the Continental and Provincial Congress; and that all actions, suits, and processes should be continued, altering only the style and form thereof, according to the terms prescribed by the said constitution, in the further prosecution thereof.

The several measures which at this period were brought to the notice of the American Congress, were of the highest importance and interest. The great question of independence was brought directly before that body by Richard Henry Lee, one of the delegates from Virginia. On the 7th of June, 1776, he submitted a resolution, declaring "that the united colonies are, and of right ought to be free, and independent States; that they are absolved from all allegiance to the British Crown; and that all political connection between them and Great Britain is, and ought to be, totally dissolved." This resolution was considered in committee of the whole, and was debated with great warmth and ability, and was finally adopted in committee on the 10th, by a bare majority of the colonies. Its further consideration in the House was then postponed until the 1st of July, a committee consisting of Jefferson, Adams, Franklin, Sherman, and R. R. Livingston, being ap-

pointed to prepare, in the mean time, a declaration of independence. General sentiment as yet was not fully matured upon the subject, and some of the representatives in Congress were embarrassed by the instructions that had been given them. The delay gave an opportunity for fuller consideration among the people, and for further instructions to their deputies.³⁴ Within the interval, on the 22d of June, a new appointment of deputies was made in New Jersey, and the members, as has been seen, were now expressly authorized to give their assent to the pending measure. They entered upon their duties on the 28th of June.³⁵ On the 1st of July the resolution was again taken up in the house, and being referred to the committee of the whole, was assented to by all of the colonies, except Pennsylvania and Delaware, and on the day following was finally adopted and entered upon the journals of the house.

The committee appointed to prepare a declaration had submitted a draught on the 28th of June, and the question upon its

³⁴ It has been seen that in February, 1776, the Provincial Congress of New Jersey appointed William Livingston, John Dehart, Richard Smith, John Cooper, and Jonathan D. Sergeant, to be delegates in the General Congress, to serve for one year, or until others should be appointed. These persons were in the body at the time the question of independence was brought up. They were not expressly instructed upon the point, being only empowered to assent to all measures which the Congress should deem necessary. Beside the indecisive character of their instructions, these representatives, or most of them, are supposed to have been willing to avoid the responsibility of a direct decision upon this momentous subject. Smith, alleging indisposition, resigned his seat on the 12th of June, Dehart on the 13th, and Sergeant a few days later. Cooper took no active part in the proceedings, and Livingston was recalled to fill a military appointment, and he too, as there is reason to believe, was doubtful as to the expediency of the step at the time, though when taken, he most earnestly endeavoured to sustain it. *Gordon*, p. 201. *Life of Livingston*, p. 185.

³⁵ It is not certain that they were all present at that time, but one of the number, Hopkinson, then appeared and presented their instructions. It has sometimes been stated that the delegates from New Jersey were not present at the time the question of independence was taken, though they afterwards concurred; but other accounts of at least equal authority, represent, that they were present, and that one at least, Stockton, participated in the debate. See *Biography of Signers, Memoirs of Lee, Life of Livingston, and Gordon's New Jersey*.

adoption was taken in the house on the 4th of July. After receiving some unimportant amendments, the declaration was assented to, being sanctioned by the approbation of every one of the colonies.

On the 17th of July, this important decision was approved and acquiesced in by the Provincial Congress of New Jersey, in the following manner and terms: "Whereas the Honorable Continental Congress have declared the United Colonies free and independent States, we, the deputies of New Jersey, in Provincial Congress assembled, do resolve and declare, that we will support the freedom and independence of the said States with our lives and fortunes, and with the whole force of New Jersey." On the following day it was also resolved, "that this house from henceforth, instead of the style and title of the Provincial Congress of New Jersey, do adopt and assume the style and title of the Convention of the *State of New Jersey*."

Thus the connexion with Great Britain was fully and finally severed.

CHAPTER XXI.

PROPOSALS FOR ACCOMMODATION BY THE ENGLISH.—FIRST LEGISLATURE OF THE STATE OF NEW JERSEY.

IN regard to military operations, the year 1776 was one of gloom to the cause of America. The British had succeeded in repelling the attempts upon Canada, and were now preparing to establish a strong line of communication along the course of the Hudson River, between the city of New York and the posts on the Canadian borders. With this view, General Howe and his army evacuated Boston, and arrived about the last of June in the harbor of New York, and on the second of July took possession of Staten Island. He was joined on the 12th by his brother Lord Howe, with a fleet and a large reinforcement of troops. Lord Howe was the bearer to America, of what the British Ministry were pleased to call the "Olive Branch," as well as the sword. On the 6th of May, he, with his brother, had been appointed Commissioners by the King, to make an offer of pardon to all those who, as it was said, "in the tumult and disorder of the times, had deviated from their just allegiance, and were now willing by a speedy return to their duty, to reap the benefits of royal favor." Upon such conditions, the Commissioners were empowered to declare any colony, town, port, or place, to be in the peace, and under the protection of the Crown, and excepted from the penal provisions of the act prohibiting trade and commerce with the colonies. Upon the arrival of Lord Howe, the proposals he bore were communicated in a circular letter to the Governors lately acting under the Crown. A letter was also directed to Washington, which was rejected by him on account of its address, and another was sent to Franklin, who had been known to Lord Howe in England. A note dated July 30th, was written by Franklin in

reply; in this he spoke of the object of Lord Howe as seeming no more than to extend an offer of pardon, and lamented that his lordship had been sent so far, on so hopeless a visit. "It is impossible," he said, "to think of submission to a government that has with the most wanton barbarity and cruelty, burnt our defenceless towns in the midst of winter, excited the savages to massacre our peaceful farmers, our slaves to murder their masters, and is now bringing foreign mercenaries to deluge our settlements with blood." No other *immediate* effect was produced by the offers of the Commissioners than to influence some of the disaffected and doubtful, and to dispose them upon the earliest turn of affairs, to make their peace with their country's foes.

The attempt of the British to possess themselves of New York, had been foreseen by the American Commanders, and preparations had been made for defending it. But the force that could be collected for the purpose, was greatly inferior to that of the enemy, and after the disastrous battle of Long Island, (on the 27th of August,) Washington was forced to retire from New York, which was directly entered and occupied by the English, who also, soon afterwards, obtained possession of most of the places of strength in the neighboring country. It was supposed by his Majesty's Commissioners, that the misfortunes that were then experienced might dispose the American people to listen more favorably to the overtures that had formerly been made. General Sullivan, who had commanded at Long Island, and had fallen into the hands of the enemy, was therefore sent on his parole, to Congress, with a message from Lord Howe. His lordship informed the body, that he was unable to treat with Congress as such, but that he was desirous to confer with the members; and that he, in conjunction with General Howe, had full power to consider and adjust existing disputes, and that he was desirous an agreement might then be made, before any decisive blow had been struck. Franklin, Adams, and Rutledge were appointed a committee on the part of Congress to receive the proposals of the Commissioners, and for this purpose they met Lord Howe at Staten Island. His lordship declined receiving them as a committee of Congress, but was willing to confer with them as private individuals. But the moderation and good sense of the committee enabled them to secure a

position in which the object of their mission might be gained,² and they succeeded in drawing from the Commissioner, that his only proposition was, that if the colonies would return to their allegiance and obedience, the King and his Ministers were disposed to make their government easy, and to redress their grievances. The committee expressed their opinion to his lordship, that "a return to the domination of Great Britain was not to be expected." That the injuries the colonies had received had forced them to a declaration of independence, that all the colonies had joined in the measure, and had settled, or were settling their own governments, and that Congress had no power to agree for them that they should return to a dependent condition; but that the colonies were no doubt inclined to peace, and would readily treat with Great Britain on reasonable terms, if properly approached. These proceedings were published in full, for the information of the American people. A proclamation was afterwards put forth by the Commissioners to the people at large, in which they stated, that they were desirous to confer with his Majesty's well affected subjects upon the means of restoring tranquility, and establishing a permanent union. They informed the people that the King had directed a revision of such of his royal instructions, as might be construed to lay an undue restraint upon the freedom of legislation in any of the colonies, and would also concur in the revisal of all acts by which his subjects might think themselves aggrieved; and they exhorted the inhabitants "to reflect seriously on their condition, and judge whether they should offer their lives a sacrifice to the unjust and precarious cause in which they were engaged, or return to their allegiance." This proclamation, with the unfavorable events and prospects of the time, induced a number of persons to desert the American cause, and to accept of the offered terms. Nine hundred and fifty persons in New York, and the vicinity, presented a petition to the Commissioners declaring their allegiance to Great Britain, conceding the constitutional authority of Parliament in America, and praying that the city and county of New York might

² They informed Lord Howe that, as those gentlemen to hear, he might consider them in what light he pleased, but that they would consider themselves in no other light than that in which Congress had placed them.

be restored to his Majesty's peace and protection. By many others in different places, a similar course was afterwards pursued, and among these persons were some individuals of distinction and influence.

It was during the period of darkness just noticed, that the government of the State of New Jersey was brought into operation. By a provision of the constitution, the Legislative Council and Assembly were to be chosen for the first time, on the 2d Tuesday of August, 1776, and the members then chosen were to continue in place until the 2d Tuesday in October, 1777, and on the 2d Tuesday in October in each and every year, a new election was to be made, and the delegates elected were always to meet on the 2d Tuesday next after the day of election. The constitution received the assent and sanction of the people at large, both by general acquiescence, and by a full observance and pursuance of its several provisions. An election for representatives in the Legislative Council and Assembly, was held in the several counties on the day prescribed, and the members chosen convened, according to appointment, at Princeton, on Tuesday, the 27th of August, 1776. On the 29th the houses were organized. John Stevens was chosen Vice President of Council, and John Hart was elected Speaker of the House of Assembly.

An important part of the duty devolving on the legislative bodies, was the further establishment of the government by filling the offices in the other departments. On the 31st, in joint ballot of the two houses, William Livingston was chosen Governor of the State.* He was then engaged in the discharge of military duties, and therefore did not enter upon office for some days after his appointment. As a preliminary to the issue of commissions to the several officers, the preparation of a great seal was considered by the legislative bodies, and a resolution was agreed to, that as sundry commissions should be given before a proper seal could

* Livingston had been one of the delegates in the Continental Congress, and at the present time, was Commanders-in-Chief of the militia of New Jersey. The other candidate for the office of Governor, was Richard Stockton: on the first balloting, the votes were equally divided; and it was not until the next day that an union of parties took place, and Livingston was elected.

See, also, Livingston, Governor of New Jersey, Minutes of Joint Meeting.

be made, the seal at arms of his Excellency William Livingston should be deemed, taken and used, as the great seal of the State, until another could be procured.³

On the 13th of September, an address was made to the two houses by the Governor. His Excellency remarked, that "considering how long the hand of oppression had been stretched out against us: how long the system of despotism concerted for our ruin, had been insidiously pursued, and was at length attempted to be enforced by the violence of war; reason and conscience must have approved the measure had we sooner abjured that allegiance from which not only by a denial of protection, but the hostile assaults on our persons and properties, we were clearly absolved. That being thus constrained to assert our own independence, the late representatives of the colony of New Jersey in Congress assembled, did, in pursuance of the advice of the Continental Congress, the supreme council of the American colonies, agree upon the form of a constitution which by their consent, and open approbation, hath since received the assent and concurrence of the good people of the State; and agreeably to this constitution, a Legislative Council and Assembly have been chosen, and also a Governor. Let us then, as it is our indispensable duty, make it our invariable aim, to exhibit to our constituents the brightest examples of a disinterested love for the common weal; let us, both by pre-

³ A joint committee of the houses was afterwards appointed to prepare a great seal, and they reported that "they had considered the subject and taken the sentiments of several persons therein, and were of opinion that Francis Hopkinson, Esq., should be immediately employed to employ proper persons at Philadelphia to prepare a silver seal, which should be round, of two and a half inches diameter, and three-eighths of an inch thick; and that the arms shall be, three ploughs in an escutcheon, the supporters, Liberty and Ceres, and the crest a horse's head; these words to be engraved in large letters round the arms, viz: The Great Seal of the State of New Jersey." This report was agreed to. At a subsequent date, Francis Hopkinson furnished his account in detail, for the expenses incurred in procuring the seal, amounting to £35 2s 4d. (*Votes and Proceedings*, p. 33.) In regard to the name of the seal, as well as in other particulars that will come into notice, the legislature were obliged to depart from the provisions of the constitution. It was there directed that it should be called "The Great Seal of the Colony of New Jersey," but as the colony had become a State, a change was unavoidable.

cept and example, encourage a spirit of economy, industry, and patriotism, and that public integrity and righteousness that cannot fail to exalt a nation; setting our faces at the same time like a flint against that dissoluteness of manners and political corruption that will ever be the reproach of any people. May the foundation of our infant State be laid in virtue and the fear of God; and the superstructure will rise glorious, and endure for ages. Then may we humbly expect the blessings of the Most High, who divides to the nations their inheritance, and separates the sons of Adam."

The principal matters recommended by the Governor to the notice and care of the legislative bodies, were the ordering of measures relating to the war, especially the proper regulation of the militia; and the permanent establishment of the seat of government at some convenient and suitable place. An address was afterwards made by the Assembly agreeing in sentiment and tone with that of the Governor; resolutions in relation to the particulars recommended to notice by his Excellency were adopted, and the necessary bills were prepared.

The legislative bodies also proceeded to the appointment of other officers, in order to perfect the organization of government. John Dehart was chosen Chief Justice of the State, Samuel Tucker, Second Justice, and Francis Hopkinson, Third Justice; William Patterson was appointed Attorney General; Jonathan D. Sergeant, Clerk of the Supreme Court; Charles Petit, Secretary of State, and Richard Smith, Treasurer.⁴ Provision was made for renewing and continuing the action of the judicial department, by passing an act to confirm and establish the several courts of justice within the State. This act prescribed, that the several courts of law and justice should be confirmed and established and continue to be held, with like powers under the new government, as before the declaration of independence.⁵ Several bills of importance which had been introduced, were pending at the time of adjournment, which took place on the 8th of October, the houses adjourning to meet at Burlington on the 13th of the following month.

⁴ Richard Stockton at first received the appointment of Chief Justice, but declined serving. Sergeant also declined office, and the place was assigned to Boyce Reed.

⁵ *Passenger's Laws of New Jersey*, p. 58.

During the whole of this time, the gloom that enshrouded the fortunes of America, seemed constantly deepening. Other disasters followed upon the surrender of New York, and the American forces, unable to retain the posts on the Hudson, withdrew from that river into the heart of New Jersey, whither they were followed by the enemy. In consequence, New Jersey immediately became a principal sharer in the dangers and sufferings of the country, as well as in the efforts that were required, and were made, in resistance.

The legislative bodies convened according to adjournment, on the 13th of October, and proceeded to the transaction of business. Attention was directed toward a further organization of the militia of the State, and furnishing the quota of troops required for the continental army. A bill for raising four battalions was passed, and the several officers were at once appointed. The houses also proceeded in joint meeting, to the appointment of delegates to the General Congress. The regulations formerly adopted by the Provincial Congress in regard to the number of representatives, were continued by the legislature, and it was resolved, that one or more of the delegates should be empowered to represent and vote in behalf of the State.⁶

But at an early period the action of the legislature was arrested. From the continued retreat of the American army through the State, and the rapid advance of the British, there was but little opportunity to prepare for action, or indeed to provide for safety, and the Assembly resolved, that it would "be necessary soon to rise and retire into their several counties to provide for the security thereof." Such provisional arrangements were therefore made for the support of the government as the circumstances of the time would allow, and on the 2d of December, the houses adjourned to the 18th of February next ensuing. The general situation of affairs throughout the State, had become in the mean time ex-

⁶ The joint meeting took into consideration the necessity of choosing delegates to the Continental Congress, and upon the question as to the number, decided that five should be chosen. Richard Stockton, Jonathan D. Sergeant, Dr. John Witherspoon, Abraham Clark, and Jonathan Elmer, were appointed.

Minutes of Joint Meeting of November 30th, 1776.

tremely critical; the number and force of the enemy were such, that those of the people who remained steadfast in their opinions and views, were almost overawed, and the disaffected and indifferent found the opportunity they had sought or awaited, for joining with the invaders. The British Commissioners too, to strengthen the advantages they had gained, put forth a new proclamation, in which all persons assembled in arms against his Majesty's government, were commanded to disperse and return to their houses, and all civil officers to cease from their practices; and a full pardon was offered to those who should appear within a specified time before an officer of the Crown, claim the benefit of the offer, and subscribe a declaration acknowledging the royal authority. A number of the people of New Jersey, and among them, some of the principal men of the State, gave way to the temptation, and sacrificed patriotism to personal safety. But this was far from being the disposition of the mass of the people. There were timorous, and there were base and treacherous men, and these persons formed a class not inconsiderable in point of number. Yet a large majority of inhabitants held fast to the cause they had espoused, and most of the public officers continued in the discharge of their duties, so far as the circumstances of the time would permit.⁷ At length, and fortunately, at no late period, a favorable crisis took place in the affairs of the country. The victories gained by Washington, at Trenton and Princeton, near the close of the year, aroused the hopes of the Americans as much as they surprised and disappointed the British. By these critical enterprises, the spirit of the country at large was restored, and the greatest relief was given to New Jersey, the possession of the State by the enemy being completely broken for the time. The action of the State authorities was immediately resumed. The legislative bodies were convened by a notification from the Speaker, on the 22d of January, 1777. Trenton, the place to which the houses had adjourned, was yet scarcely sufficiently freed from the presence of the military, or the effects of military occupation, to render it a suitable situation for the meeting and action of the

⁷ In the immediate course and vicinity of the victorious army, all civil government was unavoidably suspended for the time.

houses, and they were therefore directed to convene at Pittstown.

The Governor opened the meeting by a message, in which he expressed his feeling on account of the depredations and cruelties that had been perpetrated in the incursions of the enemy, but congratulated the houses on the important successes of the American arms at Trenton and Princeton. He declared that there was no reason to be dispirited in the contest, unless the people and government were wanting to themselves; but he yet insisted that the utmost efforts would be required, and that as the legislature must be sensible of the entire inadequacy of the existing militia laws, he recommended that no business of inferior moment should be allowed to postpone the action of the houses on that important subject.

Before the business of the sitting was fairly entered upon, a rumor or an apprehension of new disturbances led to the adjournment of the houses to a more remote situation, and accordingly they removed on the 29th, to Haddonfield, in the county of Gloucester, where the session was continued. At an early period attention was directed to filling the places which had become vacant in the government. The Governor informed the houses that the Chief Justice of the State, Dehart, had refused to qualify in office, that another Justice, Tucker, in the recent period of danger, had taken a protection from the British, and that a third, Hopkinson, had declined to enter upon duty on account of his appointment to an office by the Continental Congress.* Robert Morris was appointed Chief Justice; Isaac Smith, Second Justice, and John Cleves Symmes succeeded to the place of Hopkinson.

Much difficulty was experienced in framing the law in relation

* Dehart had retired from the Continental Congress, of which he was a member, before the declaration of independence, and that circumstance, with his present refusal to enter upon office, caused him to be suspected of coldness to the American cause. Tucker was plainly deficient either in fidelity or firmness. He appeared in person before the joint meeting and offered his resignation, which was at once accepted. A few other public functionaries pursued a similar course, and among them some of the members of the legislative bodies. One of the representatives from Essex, appeared in the Assembly, and informed the House that he had taken a protection, and desired leave to resign his seat. The Assembly resolved, that "no member having taken such protection is entitled to a seat in this House, and that the place of the member is vacated."

to the militia. This subject had been for some time before the houses, and was now again pressed upon their notice by a message* from the Governor, including a communication from the Commander-in-Chief. The latter earnestly recommended that every man capable of bearing arms should be compelled to turn out, and not buy off his service for a trifling sum. "We want men," he said, "and not money." The Governor fully concurred in these views. But so rigid a course, if proper in point of policy, at a time when a new government had but just been established, could not have been carried out into actual practice. Beside the difficulty of bringing the entire active population into military service, there were many persons in the State, who believed themselves to be forbidden to engage in war, or warlike measures, and whom no earthly consideration could have induced to violate their principles. The attempt to force these persons to a direct participation, would have been oppressive and unwise, and would also have been in vain. In the bill that was passed by the Assembly, the principle of composition was retained, the House not being disposed to proceed to the extent advised by the Commander-in-Chief, and by the Governor. Whilst the bill was still pending, strenuous exertions were made to effect an alteration. The Governor declared that it gave him "inexpressible anxiety that the bill provided for the commutation of personal service by pecuniary fines. Such a regulation," he said, "in times of actual invasion, would prove utterly incompetent and nugatory, and he recommended in the most importunate manner, that a law should be passed, exacting personal service, or that the delinquent should find another in his room." In a communication to the Governor, Washington also expressed his surprise, that an Assembly, "who were eye-witnesses to the distresses and inconveniences that have their principal source in the want of a well regulated militia, can hesitate to adopt the only remedy that can remove them, and stranger still, think of a law that must necessarily add to the load of confusion." But the bill was passed in its original form, only with an increase in the amount, and an extension of the application of the demand for pecuniary composition. The Governor expressed his great regret at the result.^a

*General Putnam, who was then in command in New Jersey, inveighed

The disappointment of the Governor in relation to the militia law, may have been somewhat relieved by the ready concurrence of the legislature in another measure proposed by his Excellency. In a message to the houses, he represented, that during the invasion of the State by an enemy, it was necessary, in order to a prompt and faithful execution of the laws, that a degree of authority should be exercised greater than was then committed to any persons or bodies in the State. He therefore recommended, that a body should be constituted, to consist of a President, Vice President, and a Council of twelve, (five of whom should constitute a quorum,) that they should be empowered to supply every vacancy in office occasioned by death, resignation, removal, or otherwise; officers so appointed to be removable by the legislature at their next meeting, without impeachment, but if not then removed, to be afterwards removable in the same manner as officers regularly appointed. That the body should also be authorized to correspond with the Congress, and with other States, and to transact business with all the officers of government, and to prepare business to lay before the Assembly; to apprehend all persons suspected of dangerous designs against the State, and to commit them to any prison, taking an account of the charges against them; to cause the laws to be faithfully executed; to recommend the Speaker to call together the General Assembly when necessary; and to call out so many of the militia of the State as should be required to aid in carrying their orders into execution, according as the exigency of affairs might demand. These powers were to be exercised for the period of six months, unless sooner withdrawn by the legislature. The recommendation of his Excellency was considered by the houses, and was substantially adopted. A law was passed for investing the Governor and a Council of twelve

strongly against pecuniary compositions. He declared that he detested the practice of admitting it, and also, (as members of society,) the sect for whom it was introduced. He also gave orders which infringed upon the laws in this respect. But Governor Livingston, though he disapproved the Acts, was opposed to their violation, and represented the case to the Commander-in-Chief, who interposed his authority; and Putnam also said, that he was far from wishing to counteract any decree of the State, "however absurd."

(the Council to be selected out of the legislative bodies,) with the authorities and powers expressed in his Excellency's message, to be exercised for the space of six months, unless sooner revoked.¹⁰ The bill for the support of the government, which had long been pending, was passed at this sitting, and became a law. It gave to his Excellency the Governor, six hundred pounds per annum, to the Chief Justice, three hundred, the third Justice, two hundred, and the Attorney General, forty pounds. Each delegate in Congress was to receive twenty shillings a day, each member of Council, ten shillings, and each member of the Assembly eight shillings.

To devise means to meet the necessary expenses that were incurred in the maintenance of the civil and military establishments, became a subject of early and earnest attention. The State authorities were not disposed to a further resort to the expedient of issuing bills,¹¹ and the period was not thought favorable for increased taxation. Yet the demands upon the treasury were constantly increasing. The difficulty was also augmented in consequence of the imperfection in the relations or arrangements between the Continental and State authorities, in reference to financial concerns. The Continental Congress, as has been seen, had issued bills, pledging the faith of the United States for their redemption, though relying upon the several States for the means of fulfilling the engagement. The amount thus issued, constituted a fund for carrying on the war, and was held and controlled for this purpose by the Congress; and that body having the control of the general operations of the war, as well as of the funds, would seem to have been the most proper authority for making disbursements. Yet the military raised in the several States, and engaged in the Continental service, returned to the governments of the States for the payment of their dues. Such at least was the case

¹⁰ The powers committed to this body were great, and nothing but the " exigency of affairs," and the limited period of its duration, could have justified the grant.

¹¹ There were bills not yet redeemed, that had been issued by the Legislature of the colony, and also by the Provincial Congress. These were recognized as State currency; were commonly termed "Old Money."

in New Jersey. This subject received the attention of the legislative bodies at the present sitting, and they resolved, "that for want of a proper mode of paying the militia that have been called out in the Continental service, many inconveniences have arisen, and are daily increasing, and that the Governor be directed to apply to the Honorable the Continental Congress and desire that they will be pleased to give directions for payment, and to establish some mode for regular payment in future." But the difficulty was not removed, and clamorous demands were afterwards made upon the State authorities. It was therefore again resolved, that the Governor should be requested to apply to Congress on the subject, and to urge that some expedient should be adopted for meeting the demands of the soldiery. But with a view to the speedy relief of the applicants, the delegates of the State in Congress were instructed to obtain from that body the sum of one hundred thousand pounds,* to be used according to a mode directed, for the payment of the troops.¹² The increased demands upon the treasury were also met in part by a different expedient. A bill was passed for delaying the sinking of the respective quotas of the sinking fund tax for the years 1776 and 1777, and applying the same towards furnishing magazines of arms and stores.

The next sitting of the legislature (which was also held at Had-donfield,) began after a short recess, on the 7th of May, 1777. Measures were then adopted for the better protection of the well affected citizens of the State, against the designs of the enemy, and for the punishment of those who should be guilty of defection. The British still lingered at some points within the State, and were in

¹² At a subsequent period, the depreciation of the Continental money rendered it impossible for Congress fully to meet their engagements. But at this time, (the beginning of the year 1777.) but about twenty millions had been issued, and the bills were mostly received at par. The embarrassment that began to occur in their circulation, did not excite alarm, as it was attributed to causes which it was supposed might be controlled by legislation, and Congress enacted a law declaring that whoever in any purchase or sale, should rate gold or silver coin higher than the Continental bills, ought to be deemed an enemy to the country. And at this sitting, the Legislature of New Jersey passed an act "for preventing disaffected and evil minded persons from destroying the credit and reputation of the Continental bills of credit."

force in New York, and they pursued a course of irritating hostility, suited rather to the arts of banditti, than to the movements of regularly appointed military forces. Their adherents in the State were incited to watch for individuals, and several persons of distinction were kidnapped and carried off, and rewards were set upon the heads of particular officers. Governor Livingston remarked, that "they were resolved to contaminate the British name by every species of infamy, rather than abandon their purpose of enslaving a free and unoffending people." To arrest this practice, a bill was prepared in the legislature empowering the Governor and Council of safety to apprehend and imprison such and so many persons known to be disaffected to the State, as might be thought sufficient to induce the enemy to release such of the citizens as had been kidnapped and carried off. Other measures of a vigorous character were adopted in reference to "traitors and disaffected persons." The Governor and Council of Safety were authorized to arrest and imprison all suspicious or suspected individuals, and an act was passed confiscating the *personal* estates of such as had deserted to the British, giving them, however, a period of grace in which they might return, and claim and take possession of their property, and receive full pardon, upon renewing their allegiance to the State. By this measure, many who had become sensible of their error, or were disappointed in the reception they had received, were reclaimed, and restored to citizenship.

Events of much importance to the country at large were occurring at this period. The Americans had been greatly inspired by the successes in New Jersey, and the hopes that arose in consequence, together with the indignation excited by the outrages of the English, had brought an important augmentation to the forces of Washington.¹³ But a movement from which

¹³ The conduct of the British in New Jersey tended, in a great degree, to excite and confirm opposition. The peaceful and unresisting were plundered and abused, and the most wanton and cruel injuries were inflicted; and with a strange disregard to good policy, as well as good faith, no favor was shown even to those who had received written protection from the British. "The Hessians," says Gordon, "would not understand, and the British soldiers deemed it a foul disgrace that the Hessians should be the only plunderers." Universal indignation was thus aroused.

much was expected by the British, was in progress: the plan already noticed for dividing the States by establishing a line from Canada to New York, had partially succeeded, and its final completion was earnestly sought. The principal direction of this scheme was committed to General Burgoyne: he was now advancing from the north, and had succeeded in taking Ticonderoga, and forcing his way to the Hudson. But he had arrived in the midst of a hostile country, where it was difficult to retreat or to advance, and where supplies could only be obtained by difficult and hazardous operations, and a detachment of his army which had been sent out to seize upon a quantity of provisions at Bennington, was met and defeated by a body of American troops under General Stark. This event, which took place on the 15th of August, (1777,) together with others that quickly followed, rendered the situation of the British Commander extremely critical, and the attention of all parties was earnestly directed toward the movements at that point. At this juncture, the Legislature of New Jersey again convened after a recess extending from the 7th of June to the 3d of September.¹¹ On the 8th, the Governor addressed the houses: he congratulated them on the success of the American arms at Bennington, which he said reflected the brightest lustre on the officers and men, and gave the greatest encouragement to a continuance in strenuous efforts. Several matters of pressing importance were recommended to the notice of the houses: his Excellency advised that measures should be taken to meet the debts of the State, which he said would be severely felt, unless seasonably discharged, and that an enactment for sinking a portion by tax, should directly be passed. He again brought forward the subject of the militia laws, and strongly insisted upon a change in their provisions: he also recommended that a modification should be made in the law prescribing the punishment for high treason.¹²

¹¹They again convened at Haddonfield, but on the 24th adjourned to meet on the 29th at Princeton.

¹²Under the constitution, the crime in question could only be committed against the *colony*, and not against the State, and hence the State courts could not consistently pronounce a judgment in proper form. Beside this, the existing law allowed, or required the dismemberment of the criminal, which was

A renewal of the acts constituting the Council of Safety was also recommended, the period for their continuance being nearly expired. These several particulars received the attention of the legislative bodies. But the recommendation of the Governor in regard to provisions for the State debt, was not fully acceded to. Resolutions were adopted by both houses, directing the Governor to call in the arrearages due from the counties on account of the sinking fund tax, and that the sinking of the bills should be deferred, and the amount be applied to meet the present demands. A bill was also prepared to raise a fund by general taxation for defraying the necessary expenses of the State, but after protracted consideration, it was deferred to the ensuing session of the Assembly. An enactment was passed for continuing the Council of Safety, and in addition to their other duties and powers, they were authorized to give relief to such officers and privates of the militia as had been disabled in the service of the State, and to the widows of such as had fallen; this was to be done in such manner as the Council should deem equitable and necessary, and they were to draw upon the treasury for the amount so expended. A law was also passed to ascertain the punishment for high treason. It prescribed that when any one should be convicted, the sentence awarded, so far as respected the corporeal punishment of the offender, should be the same as in cases of murder; and that all commissions and writs which by the constitution were required to run in the name of the colony, should run in the name of the State.¹⁶ An act was passed explaining and amending the militia law,¹⁷ and provision was made for bringing the forces of the State into effective service. The houses then rose and the session was closed.

Thus terminated the action of the first Legislature of the State. It had existed during a period of the greatest difficulty and danger; for a great portion of the time the State was overrun by a hostile

represented by the Governor as "so shocking and sanguinary, as the humanity of an American legislature cannot be presumed to have intended."

¹⁶ Paterson's Laws, p. 38. By this act the provisions of the constitution were again unavoidably contravened.

¹⁷ The general features of the law do not appear to have been changed.

force; the government was new and untried; and many of the citizens, and some of the public functionaries, proved fearful or unfaithful, and made their peace with the enemy. With a few exceptions, the members of the legislative bodies stood firm; they continued, notwithstanding frequent interruptions, in the discharge of their duties, and by their steadiness, together with the energy and determination of the Governor, order was preserved in the State, and its means and strength were directed in maintaining the cause of the country.

CHAPTER XXII.

SECOND LEGISLATURE.—ARTICLES OF CONFEDERATION.—FINANCIAL MEASURES.

THE new Legislature which was chosen on the 14th of October, met according to law, on the 28th of the same month, 1777. The houses were organized by the appointment of the former officers, John Stevens being chosen Vice President of Council, and John Hart, Speaker of the Assembly. On the 1st of November, William Livingston was unanimously re-elected, in joint meeting, to the office of Governor.¹ Events of an important but varied character were now taking place. The critical situation of Gen. Burgoyne, has already been noticed. This officer had found it impossible to extricate himself from the situation in which he was placed, and on the 18th of October, his entire army was surrendered. Soon afterwards, the garrison at Ticonderoga returned to Canada, and not a foe remained in the northern portion of the union. But occurrences less favorable were passing in another direction. Whilst the movements in the north were in progress, Admiral and Lord Howe had entered upon an attempt against Philadelphia, the capture of which place, together with the expected success of Burgoyne's expedition, would, as was supposed, ensure the subjection of the country. The Commanders approached their object by a circuitous course; the forces leaving New York were conducted by sea, advancing up the Chesapeake and landing at the head of the

¹ On the 20th, the joint meeting elected five delegates to the Continental Congress, viz: John Witherspoon, Abraham Clark, Jonathan Elmer, Nathaniel Scudder, and Elias Boudinot. It was said that the representation was made to consist of five, in order to give some relief to the members in their attendance, and that the State might not be put to unnecessary expense but three were to attend at the same time.

River Elk.² Their progress was resisted by Washington, at Brandywine, but without effect, and on the 26th of September, a detachment of the British army, under Cornwallis, entered the American Capital. Congress retired to Lancaster, whilst Washington continued to hover in the vicinity of the enemy. In the Capital, as on the banks of the Hudson, the British found themselves straitened for want of supplies; hence their necessities, as well as their enmities, led them to frequent incursions into the neighboring country, and New Jersey being most exposed, was thus rendered, once more, the theatre of hostile movements.³ Such was the state of affairs at the time of the meeting of the legislative Bodies. Beside the presence of an enemy in the country, an evil of a different kind began to appear, and to be felt. The "sinews of war" began to be weakened. The money issued by the Continental Congress had hitherto served to enable the General, and the State authorities to carry on their operations; but the process of depreciation had now commenced, and quickly became a source of most serious difficulty. The bills had already declined in value nearly one-

²The undertaking against Philadelphia would probably have been made through New Jersey, but the strong position of Washington, and the general movement of the militia of the State in his support, prevented the attempt.

³Washington being established in Pennsylvania, near Philadelphia, intercepted supplies from that direction, and Congress also declared the penalty of death against any who should furnish provisions to the enemy. They were thus obliged to depend upon a concentration with their fleet by the Delaware, and the efforts of strong detachments in directions that were least protected. New Jersey, particularly its lower portion, as being in the vicinity of Philadelphia, as the seat of some of the works obstructing the Delaware, and as being destitute of a commanding force for its defence, was particularly exposed to attack, and suffered accordingly. On the 22d of October, a body of Hessians under Count Donop, marched down the Jersey shore and advanced against Fort Mifflin, situated at Red Bank, on the Delaware. But the attempt entirely failed, and the Commander was mortally wounded. During the succeeding months, several detachments were sent into the lower counties, where the greatest injuries and outrages were committed; the fidelity of the people and of the militia was tested by offers of pardon and protection, as well as by proposals of full payment for cattle and forage, and by threats of vengeance against those who should resist, or incite to resistance. The temptations, however, except in a few instances, were offered in vain, and the attempts at pacification were met by vigorous opposition.

half. At an early period, Governor Livingston directed the attention of the legislative bodies to this subject. He stated that the Continental money had fallen in value below the bills of the State, and of the neighboring States, and that the former were frequently exchanged at a loss for the latter. He was inclined to attribute this depreciation to the evil offices of the enemies of the country, and characterized the exchange above mentioned as an "infamous traffic." He recommended for the purpose of checking it, that the State bills should be called in and exchanged for Continental money, and that the passage of the former should be entirely prohibited after a specified time, or if this expedient should not be approved, that a heavy fine should be imposed upon those who should be concerned in such exchanges. A similar recommendation was soon afterwards made by Congress. But no penal regulations could long suffice to maintain the circulation of money that had been issued without any such provision as would ensure its redemption. Congress had no means of sinking the amount; they had made engagements by the issue of bills, relying upon the States to redeem the amount apportioned to them respectively; but as yet, little evidence had been given that the States would be ready, or able to meet the obligation. At the same time that the resources of the country were becoming doubtful, its necessities were increasing. The army was in the most destitute condition. Governor Livingston represented to the legislature that the Jersey troops in the Continental service were in want of clothing of every kind, and that unless some steps should directly be taken to supply them, they would be unable to keep the field. That the Clothier General found it impossible to procure supplies, and it was incumbent upon the different States to contribute to their aid.⁴

⁴ The situation of the troops at this time, and during the subsequent winter, whilst they lay at Valley Forge, was truly deplorable. By their resolute endurance they were enabled to keep up the appearance of threatening the enemy, who fortunately were ignorant of their real condition, but large numbers were totally unfitted for active service. The Legislature of New Jersey made as early and as full provision as was possible for the relief of their troops. A law was passed for procuring articles of clothing and furnishing them to the regiments. Such supplies were afterwards continued according to the urgent recommendations of Congress, and a special arrangement was made for the purpose.

"A man of sensibility," he said, "cannot but feel for brave men, fighting for their country at an inclement season, many of them without shoes, stockings, warm clothing, or even blankets to lie on." Further provision was also required for the increasing numbers of the soldiery who were sick and disabled, and for assisting their families. Aid was likewise demanded for a class of sufferers of a different description; numbers of the citizens of the State had been carried off by the enemy, and were thrown into prisons in New York, or elsewhere, and left in a state of the greatest destitution, and such persons not being considered as prisoners of war, did not come within the immediate notice of the Commissary General of Prisoners. It was regarded as the duty of the State, as well as demanded by humanity, that some provision should be made for persons so unfortunately circumstanced. A special commissioner was therefore appointed to furnish flour and fuel for their use, to be appropriated to the objects under the care and direction of the Commissary General of Prisoners.

The measures of the legislature were directed to provide the means for supplying these various demands. Notwithstanding the depreciation of the Continental money, the confidence, or the hopes of legislators as to the soundness of this currency, together with the necessities of the times, led to a continued resort to its use, and it was hence resolved, that application should again be made to Congress for a sum sufficient to discharge the amount due to the military, in the Continental service. An enactment, better calculated to give permanent relief, was also agreed to; the bill of the former session, to raise a fund by taxation for discharging the debts and defraying the expenses of the State, was again taken up, and after some delay, was finally passed. For the purpose of improving the finances, (as well as a measure of public justice,) a law was passed for taking possession of the property, both real and personal, of such individuals as should leave the State and join themselves to the enemy. Congress had recommended that the estates of all persons who had forfeited their right to protection, should be confiscated and sold; but the legislature pursued a more lenient course; the law now passed made provision for taking

possession of, and leasing the *real estate*, and that the personal property only should be forfeited.⁶

Whatever difficulty might be experienced by the States, or by any State, in their struggle, no change was made in the temper of the people; they were still resolved to persist in their course. For the better prosecution of their purposes, a more perfect union among the States was considered desirable, and with this view a plan was devised and adopted by Congress; it was agreed to on the 15th of November, 1777. By this system, the thirteen States were to form a confederacy under the style and name of the "United States of America;" all the States to assent thereto by their legislatures, with instructions to their delegates in Congress to ratify the same.

The tenacity of purpose which was thus exhibited by the Americans, together with the actual success they had gained, were productive of results beyond those that were exhibited in their domestic affairs; it won them a character abroad. The capture of Burgoyne, the determined opposition to Howe, and the earnest pursuit of their aims, demonstrated the energy and ability of the people of the States, and their firm determination to maintain independence. In consequence, those nations whose assistance and favor had been hitherto withheld, or but cautiously and covertly given, were stimulated to open engagements. France especially, the ancient enemy of England, had been earnestly watching the contest, and only awaited the moment when prudence would warrant her in joining therein. The occurrences just noticed decided the course of the court. On the 16th of December, the American Commissioners already at Paris, were informed, by order of the King, that his Majesty had determined to recognize the independence of the United States of America, and to conclude a treaty

* At the next session of the Assembly a still more rigid enactment was made; an act was passed for forfeiting and vesting in the State the real estates of certain fugitives and offenders, satisfying the lawful debts and demands against them. All persons who had aided and assisted the enemies of the State or of the United States, by joining their armies within the State or elsewhere, or who had voluntarily gone to, or taken refuge, or continued with, or endeavoured to continue with the enemy, and aid them by council, or otherwise, were included.

Peterson's Laws, p. 40.

of alliance and commerce with them, and that he would not only *acknowledge* their independence, but would actually support it by every means in his power.⁷

These important matters were brought before the present legislature of New Jersey. The "articles of confederation and perpetual union between the States," were submitted to the Assembly

⁷ According to the principles of the family compact between France and Spain the latter was to be consulted before the agreement made by France could be fully concluded, and the concurrence of the Spanish court was accordingly solicited. But Spain refused her assent at the time. Notwithstanding this the French King persisted, and on the 6th of February, 1778, a treaty of commerce was signed by Franklin, Deane, and Lee, on the part of the United States, and by M. Gerard on the part of France, together with a treaty of defensive alliance in case war should be the consequence. The conclusion of the treaty with France, with the events that had led to that measure, produced a powerful impression in England. "When the account of the treaties of the 6th of February had reached Whitehall," says Laurens, "administration were perplexed, they were stunned; Lord Mansfield, in tears, applied to Lord Camden, as a good man, to interpose for the salvation of the country." An attempt soon followed to effect a reconciliation with America. Even before the conclusion of the French treaty was known, conciliatory bills had been introduced into Parliament, and whilst pending there, were sent to the United States; soon afterwards these bills were passed, and three Commissioners, the Earl of Carlisle, Governor Johnston, and Mr. Eden, were appointed to visit America. They were to endeavour to procure the acceptance of the proposals made by the Ministry, and to counteract what was called the "insidious interposition" of France. The Commissioners resorted to every means, and some not of the most honorable character, to effect their purpose. But though the offers that were made were such as might once have been accepted, they came too late. The Ministry were willing to allow the demands of the Americans, provided they would return to their former state, and acknowledge allegiance to England. But since the recent events, especially the alliance with France, Congress and the people considered themselves secure of independence, and the Commissioners were informed, that any acts or proposals founded on the idea of dependence were wholly inadmissible, and that the only solid proof of a desire for reconciliation and peace, would be an acknowledgement of the independence of the States, and the speedy withdrawal of all hostile forces. To this decisive declaration the Commissioners made but an evasive reply, and their exertions terminated with an offer of pardon to all persons who should, within forty days, withdraw from the civil or military service of the States, and continue good and peaceable subjects of the British King, an offer which none were now disposed to accept.

on the 4th of December, 1777, with an address from Congress recommending immediate attention thereto. The adjournment of the bodies soon afterward, prevented direct compliance, but on the meeting of the houses, early in February, their attention was again directed to the subject, and on the 26th the articles were read and entered on the journals. On the 29th of May, information of the treaty with France was communicated to the houses by the Governor. "I heartily congratulate you," he said, "on the agreeable news from France. As we were at first compelled into a declaration of independence, it was the highest wisdom to solicit a suitable alliance for its security and support; to both these measures we may appeal to the whole world, that we were driven by a tyrannical King, a venal Parliament, and a flagitious Ministry. We want now," he said, "but one spirited and general effort to expel the remnant of banditti from the Continent, and forever emancipate ourselves into complete and uninterrupted liberty." The "spirited and general effort" was not delayed. Earnest exertions were made by Congress and the States, and the new allies were not lacking in giving their support. The treaty with the French did not prove a mere empty agreement; not long after its completion, a Minister (M. Gerard,) was sent to America, accompanied with a powerful fleet. The immediate object of the naval force was to shut up the Delaware, and thus not only to intercept the British fleet, but to cut off supplies from the army at Philadelphia. But the armament did not arrive until some days after the departure of the English army and fleet. Secret orders had been given for the evacuation of Philadelphia, and on the 18th of June, Clinton (who had succeeded Howe in command,) departed for New York, proceeding across New Jersey. Washington immediately followed, and coming up with the enemy at Monmouth, a severe engagement ensued. The result was not decisive, but it was followed by a more rapid movement of the English, who soon afterwards passed into New York, and Washington took post on the Hudson.

The consideration of the articles of union between the States, was yet pending; as already noticed, the plan had been submitted to the legislature of New Jersey, and on the 25th of March, committees of the two houses were appointed to consider and make

report thereon. A report which was characterized by much ability was made by the joint committee on the 15th of June. Several objections to the plan were stated and presented at length. The committee said:

"1. That in the fifth article, where, among other things, the qualifications of the delegates from the several States are described, there is no mention of any oath, test, or declaration, to be taken or made by them previous to their admission to seats in Congress. It is indeed to be presumed that the respective States will be careful that the delegates they send to assist in managing the general interests of the Union, take the oaths to the government from which they derive their authority; but as the United States, collectively considered, have interests as well as each particular State, we are of opinion that some test or obligation binding each delegate, while he continues in the trust, to consult and pursue the former as well as the latter, and particularly to assent to no vote or proceeding which may violate the general confederation, is necessary. The laws and usages of all civilized nations evince the propriety of an oath on such occasions, and the more solemn and important the deposite, the more strong and explicit ought the obligation to be.

"2. By the sixth and ninth articles, the regulation of trade seems to be committed to the several States, within their separate jurisdictions, in such a degree as may involve many difficulties and embarrassments, and be attended with injustice to some States of the Union. The committee are of opinion that the sole and exclusive power of regulating the trade of the United States with foreign nations, ought to be clearly vested in the Congress, and that the revenue arising from all duties and customs imposed thereon, ought to be appropriated to the building, equipping, and manning of a navy for the protection and defence of the coasts, and to such other public and general purposes as to the Congress shall seem proper, and for the common benefit of the States. This principle appears to us to be just, and it may be added, that a great security will by this means be derived to the Union from the establishment of a common and mutual interest:

"3. It is wisely provided in the sixth article, that no body of forces shall be kept up in any State, in time of peace, except such number only as, in the judgment of the United States in Congress

assembled, shall be deemed requisite to garrison the forts necessary for the defence of such State. We think it ought also to be provided and clearly expressed, that, no body of troops be kept up by the United States in time of peace, except such number only as shall be assented to by nine of the States. A standing army, a military establishment, and *every appendage thereof*, in time of peace, is totally abhorrent from the ideas and principles of this State. In the memorable act of Congress, declaring the United Colonies free and independent States, it is emphatically mentioned as one of the causes of separation from Great Britain, that the Sovereign thereof had 'kept up among us, in time of peace, standing armies, without the consent of the legislatures.' It is to be wished the liberties and happiness of the people may, by the confederation, be carefully and explicitly guarded in this respect.

"4. In the eighth article, we observe, that as the frequent settlements of the quotas for supplies and aids to be furnished by the several States in support of the general treasury will be requisite, so they ought to be secured. It cannot be thought improper or unnecessary to have them struck once at least in every five years, and oftener if circumstances will allow. The quantity or value of real estate in some States, may increase much more rapidly than in others, and therefore the quotas which are at one time just, will at another be disproportionate.

"5. The boundaries and limits of each State ought to be fully fixed and made known. This we apprehend, would be attended with very salutary effects, by preventing jealousies as well as controversies, and promoting harmony and confidence among the States. If the circumstances of the times would not admit of this, previous to the proposal of the confederation to the several States, the establishment of the principles upon which, and the rule and mode by which the determination may be conducted, at a time more convenient and favorable, and a provision for despatching the same at an early period, not exceeding five years from the final ratification of the confederation, would be satisfactory.

"6. The ninth article provides, that no State shall be deprived of territory for the benefit of the United States. Whether we are to understand that by territory is intended any lands, the property

of which was heretofore vested in the Crown of Great Britain, or that no mention of such lands is made in the confederation, we are constrained to observe that the present war, as we always apprehended, was undertaken for the general defence and interest of the confederating colonies, now the United States. It was ever the confident expectation of this State, that the benefits arising from a successful contest were to be general and proportionate, and that the property of the common enemy, falling in consequence of a prosperous issue of the war, would belong to the United States, and be appropriated to their use. We are therefore greatly disappointed in finding no provision made in the confederation for empowering the Congress to dispose of such property, but especially of the vacant and unpatented lands, commonly called the Crown lands, for defraying the expenses of the war, and for other such public and general purposes. The jurisdiction ought, in every instance, to belong to the respective States, within the charter or determined limits of which such lands may be seated; but reason and justice must decide, that the property which existed in the Crown of Great Britain previous to the present revolution, ought now to belong to the Congress, in trust, for the use and benefit of the United States. They have fought and bled for it in proportion to their respective abilities, and therefore the reward ought not to be predilectionally distributed. Shall such States as are shut out by situation from availing themselves of the least advantage from this quarter, be left to sink under an enormous debt, whilst others are enabled, in a short period, to replace all their expenditures from the hard earnings of the whole confederacy.

“7. The ninth article also provides that the requisitions for land forces to be furnished by the several States, be proportioned to the number of *white* inhabitants in each. In the act of independence we find the following declaration, ‘we hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights, among which are life, liberty, and the pursuit of happiness.’ Of this doctrine, it is not a very remote consequence, that all the inhabitants of every society, be their color or complexion what it may, are bound to promote the interests thereof, according to their res-

spective abilities. They ought therefore to be brought into the account on this occasion. But admitting necessity or expediency to justify the refusal of liberty in certain circumstances, to persons of a particular color, we think it unequal to reckon nothing upon such, in this case. Should it be improper, for special local reasons to admit them in arms for the defence of the nation, yet we conceive that the proportion of the forces to be embodied ought to be fixed according to the whole number of inhabitants in a State, from whatever class they may be raised. If the whole number of inhabitants in a State, whose inhabitants are all white, both those who are called into the field and those who remain to till the ground and labor in the mechanic arts, and otherwise, are reckoned in the estimate for striking the proportion of forces to be furnished by that State, ought even a part of the latter description to be left out in another? As it is of indispensable necessity in every war that a part of the inhabitants be employed for the uses of husbandry and otherwise at home, while others are called into the field, there must be the same propriety that persons of a different color who are employed for the same purpose in another, should be reckoned in the amount of the inhabitants in the present instance.

"8. In order that the quota of troops to be furnished in each State on occasion of war, may be equitably ascertained, we are of opinion that the inhabitants of the several States ought to be numbered as frequently as the nature of the case will admit, and at least once every five years. The disproportionate increase in the population of different States, may render such provision absolutely necessary.

"9. It is further provided in the ninth article, that the assent of nine States, out of the thirteen, shall be necessary to determine in sundry cases of the highest concern. If this proportion be proper and just, it ought to be kept up should the States increase in number, and a declaration thereof made for the satisfaction of the Union."⁸

⁸This report was signed by order of the joint committee, by Stephen Crane, of the Council, and Peter Tallman, of the House of Assembly.

Notes, vol. 5, p. 146.

After the reading of the report, new committees were appointed to draw up a representation to Congress on the subject, and on the 16th of June a draught of such representation was presented: embracing with slight alterations the report of the former committee; it was adopted by the houses, and was ordered to be immediately forwarded to Congress. The representative bodies stated that "we think it our indispensable duty to solicit the attention of Congress to these considerations and remarks, and to request that the purport and meaning of them be adopted as a part of the general confederation: by which means we apprehend the mutual interests of all the States will be better secured and promoted, and that the legislature of this State will then be justified in ratifying the same." The question was taken in Congress whether the purport and meaning of the several amendments proposed by New Jersey should be admitted as a part of the confederation, and was decided in the negative, three States in the affirmative, six in the negative, and one divided. The amendments proposed by other States were also negatived. In July (1778,) a form of ratification was adopted in Congress, and the articles were signed by the delegates of all the States except New Jersey, Delaware, and Maryland. A letter was sent to these States urging their attention to the subject. On the 14th of September this letter was laid before the legislature of New Jersey by the Governor. His Excellency remarked that it was of the highest importance, that the confederation should be ratified by all the States with all convenient despatch, and he was happy that no obstruction had been given on the part of this State, except that which arises from certain objections to some of its articles, of which that against the unequal appropriation of the lands lately called Crown lands, appears of too great moment to the interest of the people of the State to give up. He could not conceive that the "patriotism and good sense" of the State required the legislature to instruct the delegates to ratify the confederation, trusting to future deliberations to make such alterations and amendments as experience may show to be expedient and just, while the patriotism and integrity of the present Congress deferred that justice, which it was in their power instantly to grant, to a future Assembly, concerning whose alterations and amendments no certain conclusion could be formed.

Committees were again appointed in the two houses to take into consideration the propriety of instructing the delegates in Congress to sign and ratify the articles as they stood, and on the 25th of September they reported that, in their opinion, it was not expedient under existing circumstances to give such authority or instruction, which report was agreed to. Before further action was taken upon the subject the houses rose and the session terminated.

A new legislature was elected at the time prescribed by law, and convened at Trenton on the 27th of October, 1778. The organization of the houses was effected by the appointment of the former officers, and William Livingston was chosen again to the office of Governor. The subject of the articles of confederation was taken up by the new bodies, a letter having been written by Congress urging renewed attention thereto. The houses resolved themselves into committees of the whole and acted jointly upon the subject, and the joint committee finally resolved and reported "that notwithstanding this committee view with concern the terms of the articles of confederation between the several States; and notwithstanding the objections lately stated and sent to Congress on the part of this State, are founded in justice and equity, and several of them of the most essential moment to the interest thereof; yet, maturely considering the urgent necessity of acceding to the confederacy; that every separate and detached State interest ought to be postponed to the public good; and firmly relying that the candor and justice of the several States will, in due time, remove the inequality which now subsists; it is therefore the opinion of this committee that the delegates representing this State in Congress be immediately instructed to subscribe the said articles, that the same may become conclusive on the part of this State, and obligatory thereon." This report was agreed to by the houses on the 14th of November, and instructions were given to the delegates in Congress in accordance therewith.⁹

In the midst of the various circumstances that had occurred of

⁹ Beside furnishing instructions to the delegates, a special act on the subject was passed, entitled "an act to authorize and empower the delegates of the State of New Jersey in Congress, to subscribe and ratify the articles of confederation and perpetual union between the several States."

an encouraging character, much and increasing difficulty was experienced by the States in regard to their financial concerns, on which account their operations were greatly impeded. To this subject the attention of the legislature of New Jersey was particularly turned. At their first sitting, an act was passed for raising the sum of one hundred thousand pounds, by taxation, for discharging the debts and defraying the expenses of the State. But during the next sitting, in April, 1779, it was perceived that far more ample provision was required to meet the demands of the time. The troops of the State continued to be in a most destitute condition; a representation and remonstrance from the officers was presented, setting forth their grievances with respect to their pay, subsistence, and clothing, and asking redress.¹⁰ In the case of one individual (Gen. Maxwell,) who presented a separate appeal, a tone of complaint almost reaching to reproof and reproach was assumed.¹¹ As already noticed, the legislature had been anxious that some general provision for the payment of the troops in the Continental service, should be made by Congress, under the belief that this was the most proper and advantageous mode. To the applications just noticed, it was therefore replied, that provision had been made as far as was consistent previous to an application to Congress, but that if no provision should be made by that body after a proper representation to them, it would then be the duty of the State to provide for their quota of the troops, in the

¹⁰ During the recess of the Legislature, the necessities of the troops were so urgent that certain individuals were induced to interpose. William Livingston, the Governor, John Cooper, Andrew Sinnickson, Joseph Holmes, Robert Morris, Peter Talmage, Aaron Van Natta, Silas Condit, and William C. Harrison, requested the Treasurer of the State to furnish to the Commissioner of Clothing any sum not exceeding seven thousand pounds, to be used for purchasing clothing, and became responsible for its restoration to the treasury in case no provision for the purpose should be made by the Legislature. The Legislature afterwards approved the appropriation.

¹¹ A resolution was offered in the Assembly, that the letter of Gen. Maxwell contained indecent and undeserved reflections upon the House, and that the same be transmitted to Congress, with a proper expression of the disappointment and displeasure of the Legislature. The resolution was not carried.

best manner they were able to devise. A full representation to Congress was accordingly made upon the subject.¹²

The representation and petition of the State of New Jersey sheweth, That we are fully convinced the circumstances of the times render a further provision for the subsistence and comfort of the army of the United States indispensably necessary, but are of opinion the mode adopted to effect this purpose, is very improper, and will be productive of injurious consequences. The several States are each forming a separate plan of supplying their own troops with such necessities as they think most advisable; nearly at the prices current when the army was established; and stipulating in their favor such other privileges and advantages as may, in a considerable degree, make good the contract under which they entered the service at the commencement of the war. These regulations, various, unequally advantageous, and formed upon different principles, must, in their practice and operation, produce discontents, murmurings, and perhaps still worse effects. Further, whilst each State thus supports a system of its own, the whole expense is greatly and unnecessarily increased; for although it be paid by the States separately, and not out of the Continental treasury, it is still a general expense, and the wages which each State must pay in purchasing for, and issuing to their respective troops would be double or treble their proportion of the sum which would procure the whole purchased and issued to the army at large, if provision were made by Congress; we would also suggest the exceeding difficulty under which this State must labor in carrying their part of this divided mode of supply into execution. The means of importation are not in our power, and purchases on the Continent must be made at a distance, and under every disadvantage. To the Congress these things would be more practicable. In many cases only a greater quantity of the same articles would be necessary, and they might be procured in the same line, in which the army is now supplied. Every expense which may be necessary for the comfort and supply of those who devote themselves to the public service, we are willing, to the utmost of our proportion to defray, but mean not to recommend, or even approve in the slightest degree, any kind of establishment, or particular emoluments for life. These, to say nothing more, were no part of the original contract, and cannot be demanded on any equitable principles. By a resolution of Congress of the 15th of March last, a certain description of officers and bodies mentioned, are to be reckoned as parts of the quotas of the States to which they belonged, and to be credited accordingly. Within this description are troops who were commissioned or enlisted in this State who are now at different and distant places. If we are credited with these, it will by them be expected that we provide for them; and if this be not done, the officers will resign and the privates desert; but to do this seems impracticable upon any particular State system; and if possible, the expenditure occurring in the transportation of sepa-

But in addition to measures for supplying the immediate demands of the period, it was necessary also that something should be done to sustain and restore the credit of the general currency. Although the first issues had not been redeemed, Congress had been compelled to resort to new emissions, and at this time the amount exceeded one hundred millions; the depreciation of the bills in consequence, was rapidly increasing; they now would scarcely pass for one-fourth of their nominal value. Whether an earlier resort to measures for the redemption of these bills by taxation, would have prevented the decline, and maintained their value, is doubtful, unless there could also have been a limitation of issue; but it had become apparent that some measure must be speedily adopted, with a view to redemption, to prevent complete and immediate failure. In November, 1777, Congress had recommended to the several States to raise by taxes the sum of five millions of dollars for the succeeding year, the sums raised by each to be placed to the credit of the States on account of the whole amount of public debt apportioned to the States respectively, and a still larger requisition was made in January, 1779. These requisitions were considered by the legislature of New Jersey, in committee of the whole on the state of the commonwealth, and on the 3d of May the committee reported a resolution that the sum of one million of pounds should be levied by tax within the State, and paid into the treasury by the first of December next ensuing. Of this amount, the sum of one hundred and one thousand two hundred and fifty pounds was required under the first requisition of Congress, and the sum of three hundred thousand pounds under the second; the remainder was reserved for other appropriations.¹⁸

rate supplies to so many different posts, would be out of all proportion to the value of the articles supplied.¹⁹ For these reasons, with many others, with which we think it unnecessary to detain Congress, we earnestly entreat that they would adopt a mode of making such further provision for the army as they may think just and adequate; a mode which by comprehending the whole, will remove all danger of partial distinctions, which will be less difficult and less expensive than the one excepted against; and which will produce that satisfaction without which the service can never be generally agreeable to those engaged in it, or fully beneficial to the nation."

Voxes, vol. 5.

¹⁸ On the 31st of May a communication was received containing a further

The resolution was agreed to by the houses, and an enactment directing the mode of levying, and collecting the amount, was passed. A resolution was also reported to the houses, and which was likewise confirmed by an enactment, that all bills of credit emitted by the State whilst the same was a colony, should be called out of circulation by the 1st of January next ensuing, in the payment of taxes, or in exchange for Continental money. By the recall of these bills, an appearance of a kind of opposition in interest and action between the General and State government was removed, and the exchange for Continental money, tended to sustain the credit of the latter, and to enlarge its sphere of circulation. With the same view, (to sustain the credit of the currency,) an attempt was made to effect a regulation and limitation of prices. It was supposed that extortionate demands were made for the necessary articles of life, and that the evil might, and should be restrained by direct legislative interference. An act had been passed by the legislature for regulating and limiting the price of labor, and of sundry articles of produce, manufacture, and trade, and to prevent forestalling and engrossing; but as this act could only apply throughout the State, it had failed in its effect, and its operation was therefore suspended by the legislature. But an opinion prevailed that such regulations were required, and that if extended and properly observed, they would aid materially in relieving the existing difficulty and distress. Petitions were presented to the legislature, praying that means might be used to procure a regulation of prices throughout the country. On the 10th of June, a resolution was agreed to in the Assembly, that as the depreciation of the Continental bills appeared to threaten the most alarming evils, a representation should be made to Congress upon the subject, and on the expediency of adopting a general regulation and limitation of prices throughout the United States. Council not concurring at the time, this measure was not immediately carried out, but at the next sitting of the legislature, the movement was renewed, and on the 20th of September it was resolved that application

requisition of Congress to the State, for the sum of two millions four hundred thousand dollars, for the service of the year. But it was resolved that no larger sum should be raised than had before been proposed.

should be made to Congress requesting and urging them to adopt and recommend to the States some general plan for limiting and determining prices; and that a circular upon the same subject should also be directed to the legislatures of the several States.¹⁴

In the address to Congress, it was said, "that amidst the promising prospects of an happy issue of the present war, and of the establishment of the glorious freedom and independence of these United States, we feel the most painful anxiety from the state of the Continental finances, which threatens not only embarrassment, but ruin to the public measures, that in a crisis so alarming, it becomes us not to consume time in useless murmurings, but to engage in devising means to remedy the evil and avert the mischief. If we calculate for a year to come, from the events of a few months past, the increase of prices, and public debts, must appear alarming: the latter perhaps will exceed the reach of common computation, and the former rise to the utter destruction of our paper currency. To prevent evils so truly deplorable, we conceive that every possible exertion ought to be made; and that nothing short of a regulation of prices generally adopted and effectually carried out, will prove sufficient. The impracticability of such a measure has been strongly represented by interested persons, but if practicable in one State, it is also in another, and throughout the Union, and that it is practicable in our State has been proved and proved in this. If other States had come into this regulation, and had persevered therein. Affairs would probably have worn a different aspect. If your honorable body take the matter up, and form a general system or plan of regulation, and recommend it to the several States, in terms as forcible as the necessity of the case will bear, we apprehend that it will, without delay, take place in the fullest and simplest manner. Multitudes in the several States formerly opposed to the measures are now anxious to see it take place; they are convinced that taxation without a regulation of prices will be more likely to increase than to diminish the disease. Every vender, they say, will raise upon the articles he has for sale, in order the better to enable him to pay his tax, and thus prices will go on rising, our money depreciating, and our debt increasing, until we become a ruined people. With regard to the mode of regulating, we would observe, that if prices be fixed at any certain standard not to descend, we fear it will answer no valuable purpose. Those who wish to break through the regulation have only to withhold what they have for sale, and the business will be done; the scarcity will soon compel the public to yield to their avarice; nor will they run any risk in withholding, the chance will be altogether in their favor. But if prices are reduced by moderate and regular graduations, and at certain and short periods, the case will be different; this will operate like a falling market, it will induce the people to exhibit what they have to spare, in order to avoid the loss that might be incurred by delay."

The circular to the other States represented the same sentiments from the co-

The several measures that were adopted might have served for a time to sustain the credit of the currency, could further emissions have been avoided, but this was not found practicable, and in the month of September the amount had risen to one hundred and sixty millions. At that time Congress thought it necessary to declare, that the issues in no account, should exceed two hundred millions. But even this resolution could not long be maintained, and the year 1779 drew towards its close, presenting nothing decisive in the military fortunes of the country, but with the prospect of deep embarrassment in its financial concerns.

By the legislature which was elected at the usual time, and which convened on the 27th of October, 1779, the objects which had occupied the former body were further pursued. During the

preciation of the Continental bills, and that of the many schemes of relief, a general regulation and limitation of prices, was thought most likely to have the desired effect; that loans could only prove useful as a temporary expedient, and taxation was slow, and its effects would require time to be sufficiently felt. That many and great struggles had been made to arrest the evil that was threatened, all which had fallen short of their object, because of their partial operation. A general application to Congress was recommended, but that if such an application did not appear eligible, or if when made it should not be productive of the desired effect, the State was ready to join with others in any other measure that might be thought suited to the end proposed. Nearly at the same time, and probably quite independent of the movement in New Jersey, a meeting upon the same subject was held at Hartford, composed of delegates from the eastern States as far as New York, and they recommended that another meeting should be held at Philadelphia, consisting of delegates from all the States as far south as Virginia, in the ensuing January. But in November Congress recommended a general limitation of prices throughout the States, by their own action. The legislature of New Jersey still resolved upon the appointment of delegates to the meeting in Philadelphia, and Silas Condict and Thomas Fennimore were appointed. These Commissioners afterwards reported that they had attended the Convention, and after waiting near three weeks and no Commissioners appearing from Massachusetts, Rhode Island, or Virginia, and a majority present being of opinion that they could not properly act unless all the States mentioned in the recommendation were represented, they were obliged to return without doing any thing to answer the object of their appointment, but that afterwards, as they were informed, Commissioners from Massachusetts and Rhode Island had attended, and that seven States being represented they had adjourned to meet at Philadelphia in April. What further action took place is not known.

pendency of the measures that had been adopted for procuring a general regulation of prices, it was thought necessary that new enactments upon the subject should be made by the State. Accordingly, laws were passed to prevent engrossing, forestalling, and enhancing the prices of produce, manufactures, and merchandize within the State, and for limiting the prices of various articles, and to prevent the necessaries of life from being withheld.¹⁴ Nearly at the same time Congress made new calls upon the States for the redemption of the Continental bills. Resolutions of Congress were laid before the legislature of New Jersey, recommending to the legislatures of the several States, to raise their respective quotas of fifteen millions of dollars, to be paid into the Continental treasury by monthly instalments, from the first day of February, to the first of October ensuing, and six millions were to be paid annually for the eighteen succeeding years; and the idea of any failure in the redemption of all the engagements of the government, was still strongly resisted. In compliance with the requisition, the houses entered upon the consideration of the amount necessary to be raised for the year, and it was resolved on the 20th of November, that the sum of nine millions of dollars should be raised by the ensuing October.¹⁵ Requisitions were also made upon the State in a different manner. The Governor transmitted a resolution of Congress, calling upon the State for a supply of provisions for the use of the army, and a letter was also laid before the houses from the Commander-in-Chief, stating the alarming situation of the army, and earnestly requesting supplies. These calls were answered: large supplies were furnished, under the sanction of the State, but by engagements which provided for

¹⁴ A motion was made to suspend the operation of some of the provisions of these laws, until similar provisions should be adopted by the neighboring States, but the motion was not agreed to. The laws however were afterwards suspended in part.

¹⁵ The enormous sums ordered to be levied and raised at this period, are to be considered according to the value of the currency at the time. The nominal expenditures are also to be judged by the same standard. The bill for the support of the government passed at this time, gave seven thousand pounds per annum to the Governor, five thousand to the Chief Justice, and to the other officers proportionally, and these salaries were afterwards still farther increased.

payment from the Continental treasury. These various demands, and especially the latter, proved a cause of no little embarrassment to the people. They had paid at this time, and on similar occasions, with a large portion of their produce to the Continental Agents, and were principally paid in certificates which were not available for their purposes, and thus they were rendered unable to meet the requisitions of the State authorities for the payment of taxes. Much difficulty was experienced in consequence. Petitions were presented to the legislature praying that some means might be devised for the payment of the certificates they had received, or that these certificates might be made a lawful tender in the payment of taxes. By a resolution of the 1st of March, the legislative bodies determined that an application should be made to Congress, stating the facts of the case, and asking relief, and a full representation was accordingly made.¹⁷ But, little more was done

¹⁷ It was represented in the address, "that from the position and operations of the enemy since they possessed themselves of the harbor and city of New York, and the adjacent Islands, a very considerable proportion of the labour and time of the inhabitants of New Jersey have been employed in militia service, and in transporting the supplies of the army; and for the last two years almost the whole surplus of the produce and manufactures of the States, beyond a bare subsistence for the inhabitants, has been necessarily purchased or taken, for the use of the United States. That the greater part of these late and extensive supplies remain unpaid for; that very large sums are due from the United States to the inhabitants of this State for transportation, and also, that from a real or pretended want of money, to satisfy these contracts, the Continental Agents have given certificates to the inhabitants for their respective demands. The want of money due on these certificates is so much more severely felt by the State, inasmuch as in addition to its sufferings in common with the other States of the Union, from the effects of the war, the inhabitants have been distressed in an especial manner, by a great part of the military operations centering in the State; and also from being unprovided with the means of trade, large sums are constantly drawn from the State for procuring clothing and articles of subsistence for the troops, and ammunition for the militia, whereby the State is deprived of its proportional quantity of the circulating medium. The legislature of the State, ever desirous of testifying their most ready compliance with the requisitions of Congress, as far as the circumstances of the State warranted, cheerfully adopted the measures now lately recommended by them, with the expectation of thereby supporting the sinking credit of the Continental currency, as well as adding spirit and vigour to the operations of the war, relying that

by Congress, and perhaps no more could have been done, than to forward a resolution recommending the legislature to make provision for the payment of the dues, and to charge the same to the account of the United States.

In the midst of these embarrassments new efforts and new sacrifices were required, and were made. The campaign of 1779 had been entirely negative in its results; a kind of languor, (the consequence, it may be, of too much reliance upon the treaty with France,) had generally prevailed.¹⁸ But as the season for new operations approached, the Commander-in-Chief had represented the state of affairs to Congress, and the necessity of more vigorous action. He stated that before the close of June, 1780, the term of service of nearly one-half the troops in his army would expire. In consequence, Congress transmitted a circular to the States requiring that they should furnish, for the ensuing campaign, on or before the 1st of April, their respective deficiencies of thirty-five thousand men. This circular was received by the legislature, and also a communication from the Commander-in-Chief, giving a statement of the number of troops in the service belonging to the State, the time of the expiration of their service, and the number of men required according to the resolution of Congress. Another resolution of Congress was also received, requiring the States

the money for which the inhabitants might exchange their produce, would enable them to discharge their respective assessments; but a large portion of the people declare that it is impossible for them to pay the amount without divesting themselves of the necessaries of life, or receiving a part of the money due from the United States. Affected by the complaints and approaching distress of their constituents, the legislature are constrained to call the attention of Congress to their embarrassed situation, and to request that they will take such measures as they in their wisdom may devise to discharge the debts due to the people of the State, or such proportion thereof as will enable them to pay their taxes without distress to their families.”

¹⁸ Although the events of the year 1779 had been but little satisfactory in a military point of view, an advantage had been gained in the union of Spain with France, in opposition to England. Spain, however, maintained for a time an almost neutral position toward the United States. Their independence was not acknowledged, and though Mr. Jay, the American Minister, was allowed to remain, he was not formally received. Yet indirect support was given, and the attitude of hostility toward England was not without its effect.

to procure supplies for the ensuing campaign, in articles and quantities specified. Compliance with these requisitions was by no means easy under the circumstances existing at the time, yet the necessary measures were taken. An act was passed on the 6th of March for completing the quota of troops belonging to the State, and further regulations were also made for procuring provisions and other supplies for the army.

So far as the measures adopted by Congress and the States could reach, they were measurably successful; but they failed to effect a change in the natural relation of things, in regard to monetary affairs; the shadow could not be made to continue without the substance, by any enactment or efforts. Congress continued the issue of new bills, and with every emission the value became less. The whole amount of Continental money at the opening of the year 1780, exceeded three hundred millions of dollars. The calls upon the States for the means of redeeming the bills were but very partially answered, because the means were not at command. The legislature of New Jersey, as has been seen, performed their duty in passing laws, and every endeavour was used to ensure the object in view; special appropriations were made to meet particular demands as early as should be practicable, and the desire and design of the State to comply with every requisition, were shown in the fullest manner. But the condition of affairs was such that prompt and full compliance was not possible. Specie had been drawn to other points, and even the depreciated Continental bills which might have been used to an extent, were not in hand, certificates having been received in large amounts instead. Congress at length became satisfied that the amount of money emitted could not be redeemed at its nominal value, and on the 20th of March, 1780, a resolution was passed recommending to the States a revisal of the laws called "tender acts." It was recommended that the Continental money should be taken in at the rate of forty for one, and even in this ratio the redemption was to be made in other bills. A new issue was advised, which was not to exceed one-twentieth part of the old in amount; and was to be made on the credit of the individual States; the bills to be redeemable in specie in six years, and to bear an interest of five per cent. payable also in specie; but four-tenths

of the whole amount was to be subject to the order of Congress, and the whole to be guarantied by Congress.

Measures were adopted by the legislature for carrying the new plan into operation. On the 30th of May an enactment was made for establishing a fund for sinking and redeeming the bills of credit of the United States; and soon afterwards another was passed to repeal the former act declaring the value of the Continental money, and to explain and amend the act making the same a legal tender. The bills were continued a lawful tender in the proportion above stated, and no further abatement was to be allowed in any contracts. Two hundred and twenty-five thousand pounds was authorized to be struck in the new bills. But this new scheme of finance, although it gave a momentary check to the tendencies of the time, brought no permanent relief. The credit of the new bills depreciated after a short time, so as to approach the level of the old, and hence the exchange of the old money was scarcely desired; and beside this, in New Jersey, the amount of Continental money to be exchanged was comparatively small, owing to the large sums held in certificates. The whole sum in new bills authorized by the legislature, was not issued, and the Continental money, both in New Jersey, and elsewhere, gradually perished in the hands of the holders. A crisis in the monetary affairs of the country was at hand. "Our financial concerns," said Washington, "are in an alarming state of derangement; the public credit is almost arrived at its last stage." The military operations of the season, too, were far from fortunate. The southern States, which at this period were the principal theatre of conflict, suffered extremely; South Carolina and Georgia were almost reduced, their principal cities being taken and held by the enemy. In the north, nothing had occurred that could give much relief to the picture, whilst a deep and dark shade had been thrown upon it, by the treason of Arnold.¹⁹

¹⁹ The attempt of Arnold to surrender West Point was made in September, 1780.

CHAPTER XXIII.

FINANCIAL CRISIS.—SUCCESES OF THE AMERICANS.—CLOSE OF THE WAR.—THE FEDERAL GOVERNMENT.—NEW STATE CONSTITUTION.

A new legislature convened in New Jersey in October, 1780. Governor Livingston was again re-elected to office. General depression existed at this period. The Continental money was scarcely available for any purpose, and was soon afterwards entirely withdrawn from circulation.¹ The credit of the bills lately issued was doubtful, and the large amount held by the people of the State in certificates, lay wholly useless in the hands of the holders. At the same time a considerable portion of the northern army was again stationed in the State, and continual demands were made for supplies, and the enemy being in force on the borders, unceasing vigilance as well as increased exertions were required, to prevent incursions. From these several circumstances the strength and resources of the State became greatly reduced; beside the deficiency in pecuniary means, there was an absolute scarcity of many articles of supplies. In no portion of the entire country did the pressure of the war fall more heavily than in New Jersey, and this was one of the darkest periods of the struggle. At this time too, a disposition was shown in some of the other States, or at least in one, to make a special appropriation of means which were claimed to belong to the country at large, and which were looked to as a means of final relief. Of this course New Jersey justly complained, and it was deemed proper, and was resolved that an

¹ An act was passed on the 2d of January, 1781, for ascertaining the value of the Continental money, in the payment of debts, and for taking the same out of circulation.

appeal upon the subject should be made to Congress.² But the State authorities applied themselves with earnestness, to devising measures for the removal of existing difficulties, and for sustaining the efforts of the country. A resolution of the 4th of November

²“ *Representation and remonstrance of the Legislative Council and General Assembly of the State of New Jersey.*

“ That the Legislature of this State did, by their representation dated the 16th day of June, 1778, which was read in Congress, and entered on their journals on the 25th of the same month, make sundry objections to, and propose correspondent alterations in the articles of confederation proposed by Congress to the several States in Union. That though a majority of said States in Congress did not agree to the said alterations, nevertheless, urged by the then critical state of public affairs, and particularly by the circular letter of Congress dated the 10th of July, of the same year, the Legislature did, by an act of the 20th of November following, an exemplification of which was read in Congress, and entered on the 25th of the same month, empower the delegates of the State to subscribe the said articles of confederation. That avoiding unnecessary repetitions, they beg leave in the most earnest and explicit manner, to call the attention of Congress to these several records, as from them it is clearly understood in what confidence this State waived, for the time, their just pretensions, described in the sixth article of the representation before mentioned, and postponed every private consideration, to the happiness and perfection of the Union, well convinced that the time could not be far distant, when every partial and unfounded claim would be equitably and satisfactorily relinquished. That they saw with the utmost surprise, an office opened by the Commonwealth of *Virginia*, for the sale and disposal of lands, which, before and at the commencement of the present war, were confessedly vested in the crown of Great Britain, when on the plainest principles of the law of nations, of reason, truth and justice, they are become, by the revolution, vested in Congress, for the use of the federal republic they represent. That it is the indispensable duty of the Legislature, in justification and defence of the rights of the people, to except and remonstrate in the most pointed terms, against the disposition of any property under the foregoing description, for the emolument of any State. That they acknowledge no tribunal but that of Congress competent to the redress of such a grievance as the setting up by any State, of an exclusive claim to any of the said lands, in whatever part of the Union they may be situated; and they see with pleasure, in the proceedings of Congress of the 16th of September and the 8th of October last, (this representation was made on the 29th of December, 1780,) the faithful and generous efforts made by that honorable body to compromise and adjust differences upon this subject, and have the fullest hopes that they will be effectual. That it is the habitual predilection of

was received from Congress recommending to the States to raise their respective quotas of six millions of dollars, to be partly paid in specific articles, which were enumerated, and the remainder in specie, or in the State bills recently emitted. Accordingly, a law was passed for raising by assessments the sum of one hundred and fifty thousand pounds, in money and other supplies. The levies ordered for providing supplies were to be made according to the condition and means of the several parts of the country ; most rigid regulations were also adopted to prevent an illicit traffic in provisions, with the enemy.³ Every means was resorted to, to improve and establish the public finances. In order to preserve the credit of the bills that had recently been issued by the State, a change was made in the law directing their exchange for old money,⁴ and a new emission of bills of credit was ordered amounting to thirty thousand pounds. The petitions to Congress asking that the certificates held by the people of the State should be re-

this State that all causes of complaint, jealousy, and contest, not only upon this, but upon every other subject, should subside under the conciliating influence of equity, moderation, and liberal affections, and that it may never become just to entertain a thought of resorting to other means. Confiding, therefore, in the watchful care, the wisdom, the justice and firmness of Congress, they assure themselves that the republic will be secured against detriment, and the rights of every State in the Union strictly maintained."

³ Some of the inhabitants of the State, who were disaffected or cold to the American cause, and others who were tempted by the opportunity of obtaining money which could scarcely be elsewhere procured, continued to sell provisions to the enemy, whilst the American army was in the greatest want. A strong enactment was passed to prevent the practice.

⁴ The continued depreciation of the Continental money changed the relative value of the currencies, and an alteration of the law became necessary in order to prevent the new bills from being carried down by a fixed connexion with the old. Hence an enactment was made directing that the proportion between the State bills and the Continental money should be the same as between the latter and gold and silver, and the legislature resolved, "that they were determined to redeem at full value of gold or silver, all and every of the bills issued on the faith of the State." But notwithstanding this enactment and resolution, the State bills depreciated in value, and petitions were presented setting forth the injury that was done by keeping them a legal tender, and hence on the 13th of June, 1781, the act making them a legal tender was repealed. In December, 1782, a resolution was adopted to take them out of circulation.

deemed, or that they might be received in exchange for State bills, or used in the purchase of supplies for the army, not having been successful, they were made receivable into the State treasury in payment of taxes, and much relief was thus given to the people. An arrangement was made with the troops in the Continental service, agreeing upon the amount of their dues according to a scale of depreciation which corresponded with the value of the currency at the several periods, and an enactment was made for securing the payment of the amount agreed upon. To ensure the enlistment of the forces required of the State, an act was passed to raise a fund *by loan* for discharging the bounty to be paid to the troops. Provision was also made designed to secure the more profitable use of confiscated estates.⁵

By these several measures, the State was enabled to maintain its position. The efforts made by the Continental government were also successful in bringing relief; upon the failure of the general currency, Congress was obliged to resort to other expedients. As the means of the country were so far exhausted that adequate and seasonable returns, from any mode of demand upon the States, were not to be expected, recourse was had to loans from abroad. For this purpose application was made to the King of France. In November, 1780, a letter was addressed to his Majesty by Congress, in which they represented the embarrassed situation of affairs; and Franklin, the American Minister, was instructed to use his utmost endeavours to procure the necessary aid. In December, Congress were induced by the pressing necessities of the period, to send a special Minister to France, and Col. John Laurens, one of the aids of General Washington, was appointed. Before his arrival, *promises* of assistance had been given, but the earnestness of the new envoy excited to movements more answerable to the urgency of the occasion. A subsidy of six millions of livres was furnished by his Majesty, and an additional

⁵ The sales of the confiscated estates had been numerous, and the nominal amount of the proceeds large, yet as the receipts had mostly been in Continental money, which was constantly depreciating, the benefit to the State was much reduced. The present enactment provided for a temporary suspension of sales and for a special appropriation of the issues from the estates.

sum by way of loan. Applications of a similar kind were made in Holland, and through the exertions of Adams, a loan of ten millions of livres was obtained in that country, the French King generously engaging to become responsible for the amount. Applications for aid from Spain were not successful.⁶ For the better administration of public affairs, Congress also resolved upon the establishment of distinct departments. The department of Foreign Affairs was assigned to a particular officer, as were also those of War and the Marine, and an office was established for the general direction of the finances of the country. The latter place was given to Robert Morris, an eminent merchant and financier, who applied himself with the greatest diligence and energy to the discharge of his duties, and was thus enabled, together with an unsparing use of his personal credit, to contribute in a great degree toward relieving the pressure of the time. Beside the aid received from abroad, the regulations that were made by Congress for reaching their domestic resources, were not wholly unavailing; the demands for specific supplies were mostly complied with, as were also the requisitions for money, in such kinds and amounts as the States were able to command. A resolution was also passed by Congress, recommending that authority should be given to that body to lay a duty of five per cent. *ad valorem* on goods imported.⁷ By these measures the government was enabled to conduct the country through the threatening crisis in its affairs, although the relief obtained was not in time to prevent the occurrence of much distress, and also of some disorder. In the course of the year 1780, great distress was experienced in the army from the want of proper supplies, and toward the close of the season the impatience

⁶ Spain would only grant assistance upon condition that the Americans would relinquish all claim to the navigation of the Mississippi, a demand which was positively refused.

⁷ This movement is mentioned, not that it proved an availing measure of revenue at the time, but as marking the origin of a course of policy afterwards fully pursued. The resolution was adopted by Congress on the 3d of February, 1781, and on the 2d of June the Assembly of New Jersey passed an act "to enable the Congress of the United States to levy duties of five per cent. *ad valorem*, on certain goods and merchandize imported into this State, and on prizes and prize goods, and for appropriating the same."

of some of the troops broke out into actual revolt.* Yet this evil was soon arrested, and the result of the exertions that have been noticed, was the eventful campaign of 1781.

The opening of this year presented a prospect by no means favorable to the American cause. The measures adopted by Congress and the States, for the removal of existing difficulties, were either in progress, or had not yet been productive of their full effects. The number of troops in the field was greatly below the demands that had been made, and those that had actually engaged were but very scantily and poorly provided for. The clothing and other articles of supplies that had been purchased abroad had not arrived, and the articles procured by levies in the States were not readily collected. But a gradual improvement in affairs took place. Washington, in conjunction with the forces from France, was enabled to threaten the army commanded by Clinton in New York, whilst Cornwallis was successfully resisted in the south. Somewhat apprehensive of an attack upon himself, and perhaps despairing of further successes at the south, the British Commander was desirous of a greater concentration of his forces, and ac-

It required a high feeling of patriotism to sustain the army amidst the privations they were obliged to undergo, and at this time when the pay and the supplies of the troops had so nearly failed, it is not surprising that some discontent should have been shown. In addition to the general causes of dissatisfaction, the troops of the Pennsylvania line had an especial cause of complaint. They had been enlisted for "three years, or during the war," and they conceived that their engagement was fulfilled at the close of the three years, which terminated in 1780, whilst the officers insisted that they might still be detained, as the war yet continued. On the night of the 1st of January, a general revolt of this line took place, the soldiers declaring that they would march in a body to Congress and demand ~~redemption~~ but during their march, an accommodation was effected by which a number of the troops were allowed to depart, and the arrearages of pay secured to them. On the 20th of January a small part of the Jersey line (among whom however were many foreigners) attempted a similar movement, but such measures were taken as brought them to speedy and full submission. These occurrences served not only to make known the difficulties that existed in the American army, but to exhibit the character of the enemy. They endeavoured to take advantage of the revolt, by making the most seductive offers to the troops, but though the latter were dissatisfied, they were not traitors, and indignantly rejected the proposals that were made to them.

cordingly issued orders calling Cornwallis to a nearer point, directing that he should establish himself at Point Comfort, and thus secure an opportunity for a movement by sea, as occasion might offer, or require. Disliking the position selected by his superior, Cornwallis fixed upon Yorktown, and in August fortified himself at that place. At this period, his Majesty of France, in addition to the aid already furnished to America, had despatched a fleet, commanded by the Count De Grasse, to the American coast; and Washington finding that this force was to enter the Chesapeake, conceived the design of making a hasty movement from before New York, and advancing against Cornwallis, whose escape by sea would be prevented by De Grasse. This design was executed with such exactness that the French fleet and the American army reached the point of operation almost at the same time; and the movement was carried on with such celerity that Clinton, at New York, was not apprised of the attempt, until it was too late for any effectual measures to prevent it. Cornwallis, intercepted by sea and invested by land, after various unsuccessful attempts at defence or escape was forced to surrender. On the 19th of October articles of capitulation were agreed upon, and the entire army was given up.

The capture of Cornwallis convinced the British nation that America was not to be subjugated, and a disposition toward an accommodation was soon afterwards shewn. Parliament convened on the 21st of November, 1781, and though the speech from the Throne, and the reply from the Houses, were still somewhat haughty and hostile in tone, yet soon afterwards an address was moved by General Conway, in the House of Commons, which declared "that it was the opinion of this House that the farther prosecution of offensive war on the Continent of North America for the purpose of reducing the *revolted colonies* to obedience by force, would be the means of weakening the efforts of this country against her European enemies, and tend, under the present circumstances, dangerously to increase the mutual enmity so fatal to the interests both of Great Britain and America." This motion was carried, and an address in pursuance thereof was presented to the King. In reply, his Majesty assured the House that he should take "such measures as should appear to be most conducive to

the restoration of harmony between Great Britain and her revolted colonies, so essential to the prosperity of both." Very soon afterwards a new administration was formed, composed of persons who were favorable to measures of peace, and at an early period an envoy was sent to France, to open a communication with the French Court, and the American Minister.

But the Americans did not fail in the meanwhile to pursue the advantages they had gained. Congress proceeded to adopt measures for the prosecution of a new campaign; calling upon the States for their respective quotas of men and money. The Superintendent of Finances had brought the affairs of his department into order, and had reduced the public expenditures. In the course of the season he had projected a National Bank as a further means of relief; the plan he proposed was approved by Congress, and in December, 1781, an act of incorporation was granted, the body to take the name of "The President and Directors of the Bank of North America." The bills of the bank were to be receivable in payment of all taxes, duties, and debts due to the United States. A trade which had yielded considerable profits, was now carried on with the West Indies, and capitalists came forward and invested their means in the new stock; the bank was established and directly went into operation. Important and most seasonable aid was thus afforded.

A new legislature was chosen in New Jersey in October, and the bodies convened at the usual period. The long tried Governor was continued in his place. The requisition of Congress for the payment of the quota of eight millions of dollars required of the State, was received, together with a resolution of Congress that no certificates could be taken in the amount.¹⁵ In the de-

¹⁵ Eight millions of dollars in specie was required from the States.

¹⁶ Continental certificates had been received in the State in payment of taxes, and the amount thus taken together with such sums as might still remain in certificates in the hands of individuals, formed a debt due from the Continental treasury. But this debt was not allowed as any offset at this time, Congress requiring the payment of *specie*, a requisition which though necessary under the circumstances of the time, was by no means easily complied with. A new representation earnestly requesting that provision should be made for the settlement of these certificates, had just been made by the legislature.

pressed situation of affairs which then existed, it was not deemed advisable entirely to exclude certificates in the payment of taxes, and a bill was passed for raising one hundred and fifty thousand pounds in money and certificates.¹¹

Beside the appropriation of means according to the utmost ability of the State, the authorities contributed also by their declarations, to sustain the position and efforts of the country. On the 4th of May, 1782, they adopted resolutions noticing the bill which had been brought into Parliament to enable the King to conclude a peace or truce with the United States, under the description of the *rebelled colonies*. They declared, "that we, the legislature of this State, are determined to exert the power of the State to enable Congress to support the National Independence of America, and that whoever shall attempt any pacification between these States and Great Britain, expressing or implying the least subordination or dependence of the United States to or upon Great Britain, or shall presume to make any separate or partial convention or agreement with any person acting under the Crown of Great Britain, ought to be treated as an open and avowed enemy. That although peace upon honorable terms is an object truly desirable, yet that war, with all the calamities attending it, is incomparably preferable to national dishonor and vassalage, and that no event, however disastrous, ought to induce us to violate in the least degree our connexion with our great and generous ally. That the legislature will maintain, support, and defend the sovereignty and independence of this State with their lives and fortunes, and will exert the power thereof to enable Congress to prosecute war until Great Britain shall remove all claim of sovereignty over these United States, and until their independence shall be formally or tacitly assured by a treaty with Great Britain, France, and the United States, which alone can terminate the war."

It was fortunate both in view of the interests of humanity, and also of the necessities of the country, that the struggle to secure

¹¹ The houses resolved that the Treasurer should pay to the order of the Superintendent of Finance so much of the moneys decreed to be raised by this act, as should be called for from time to time, so that the whole amount paid, should not exceed the sum of fifty thousand pounds.

the object in view, was not much longer protracted. No hostile operations of importance were afterwards entered upon. Negotiations in Europe on the subject of a treaty of peace were actively commenced, which were conducted on the part of the Americans by Franklin, Adams, Jay, and Laurens. Difficulties were experienced by the American negotiators on account of the relations in which they were placed by the alliance with France, and the instructions they had received relating to a concert of action with that government. But finally (without the perfect concurrence of his Majesty of France,) a provisional treaty was made between Great Britain and the United States, and was signed on the 30th of November, 1782. This however, was not to take effect until peace should be concluded between Great Britain and France. But on the 20th of January preliminary treaties between Great Britain, France, and Spain were settled and signed. The restoration of peace being thus essential, Congress on the 11th of April, 1783, proclaimed a cessation of hostilities, and on the 15th of the same month formally ratified the treaty.¹²

The conclusion of the war was the cause of the greatest rejoicing throughout America. The event was communicated to the legislature of New Jersey by Governor Livingston on the 19th of May, 1783. He said that "Providence having been pleased to terminate the late war in a manner so honorable and advantageous to America, I most heartily congratulate you on the auspicious event; but let us not flatter ourselves that because the war is over our difficulties are at an end. The advantages to be expected from the establishment of our independence will greatly depend upon our public measures, and a conduct suitable to so important a blessing. Perhaps at no particular moment during our conflict with Great Britain, has there been a greater necessity than at the present juncture, for unanimity, vigilance and exertion. The glory we have acquired in the war will be resounded through the universe. God forbid that we should ever tarnish it by any un-

¹² The definitive treaties between Great Britain, France, and Spain were signed on the 3d of September, 1783, and at the same time, the definitive treaty between Great Britain and the United States, and the latter was ratified by Congress on the 14th of January, 1784. *Publics*, vol. 2, p. 143.

worthy conduct in times of peace. We have established our character as a brave people, and exhibited to the world the most incontestible proofs that we are determined to sacrifice both life and fortune in defence of our liberties. Heaven has crowned our victories and heroic struggles with the most signal success, and our military exploits have astonished the world. Let us now show ourselves worthy of the inestimable blessings of freedom by an inflexible attachment to public faith and national honor. Let us establish our character as a sovereign State, on the only durable basis of impartial and universal justice; for whatever plausible sophistry the artful may contrive, or the avaricious be ready from self interested motives to adopt, we may depend upon it, that the observation of the wise man will, through all ages be found an incontrovertible truth, that righteousness exalteth a nation, but that sin (of which injustice is one of the most aggravated,) is the reproach of any people."

The long contest now concluded had been conducted under great disadvantages and difficulties. At the commencement, no Continental government existed, and consequently no general provision had been made, and the government afterwards formed, was so imperfect in its character that proper regulations and provisions if adopted, were frequently not observed. Beside this, the inexperience of the government and of the people, together with the pressing necessities of the time, led to an extension of engagements beyond the resources of the country; hence extreme pecuniary embarrassment and great pecuniary loss, were added to the numerous evils always incident to a state of war. By the depreciation and final sinking of the currency, not only was the action of the government impeded, but thousands of the people were injured, and many were entirely ruined.

To meet existing obligations and make adequate provision for the future, were now the objects to be mainly regarded. The whole expense of the war was estimated at one hundred and thirty-five millions of dollars, including the *specie value* of the bills advanced from the Continental treasury, reduced according to an established scale of depreciation. The whole amount of the debt of the United States in 1783, was estimated at forty-two millions, eight millions of which arose from foreign loans, and the remainder

was due to American citizens. Obligations of a special character had also been formed in making provision for the officers and soldiers who had been engaged in the war. These classes had suffered the greatest hardships, not merely in their particular services, but from the want of proper supplies, and the tardy and imperfect compensation they had received. To satisfy in some degree the complaints that were made to Congress and the Commander-in-Chief, the latter recommended a half pay establishment. Accordingly, in May, 1778, Congress granted half pay for seven years to all who should continue in service during the war, and a similar grant was afterwards made to the widows or orphans of such as had, or should die in the service. In 1780, a grant of half pay for life was granted to the officers; but this was finally changed to five years full pay.

Measures were taken by Congress to meet the present exigencies of the time. On the 18th of April, 1783, they declared that it was indispensably necessary to the restoration of public credit and to the discharge of the public debts, to vest Congress with power to levy certain specified duties on wines, teas, pepper, sugar, molasses, cocoa, and coffee, and a duty of five per cent. ad valorem on all other imported goods.³ The States were also required to establish revenues in such manner as they should judge convenient for supplying their respective quotas of one million and a half of dollars annually, exclusive of imports. Congress urged, in the strongest manner, a compliance with these demands, appealing to the gratitude and pride, as well as the justice and plighted faith of the nation. The legislature of New Jersey resolved, that the address and recommendation of Congress should be printed and distributed throughout the State. On the 11th of June an act was passed "to authorize the United States in Congress assembled, to levy a duty on certain goods and merchandize imported into this State from any foreign port, island, or plantation," and nearly at the same time, an enactment was made for raising the sum of ninety thousand pounds by taxation for the

³ It was proposed that these duties should continue for twenty-five years, and to be applied solely to the payment of the principal and interest of the public debt.

exigencies of the year 1783. But the same degree of regard to the recommendations of Congress was not every where exhibited. Some of the States assented to the resolution respecting imports without hesitation, but others lingered or only acceded upon condition that similar acts should be generally passed. The repeated and earnest representations of Congress finally prevailed with all the States except New York; but she persisted in refusal, and by her single negative, finally defeated the measure. This failure was most prejudicial in its effects: it not only tended in a great degree to render nugatory the efforts of Congress for the restoration and maintenance of the National credit, but was also a cause of dissension among the States themselves. New Jersey complained that the refusal of other States to make the grant to Congress, and their separate enactments upon the subject, were unjust to the country, and operated injuriously upon her, rendering her unable to meet the demands of Congress, and particularly, the demand for specie. A strong representation was made in consequence.¹³

¹³ By resolution of the 26th of February, 1786, it was said, "that the requisitions of Congress of April, 1783, for a general impost and revenue hath not been complied with by all the States, especially by the States of New York and Georgia, (Georgia afterwards acceded,) though the requisition is founded upon the most just and equal principles, and being a measure in the general opinion, absolutely necessary to the existence of the United States in their confederated capacity, while our neighbouring States, by their State imposts, are draining this State of sums annually, to a much larger amount, as we have reason to suppose, than our quota of specie called for by the late requisition of Congress. That this House cannot, consistently with the duty they owe to their constituents, comply with the requisition of Congress of the 27th of September last, or any other, requiring specie, until all the States in the Union shall comply with the requisition of Congress for an impost and revenue; or at least until the several States having the advantage of commerce which they now enjoy solely by the joint exertions of the United States, shall forbear exacting duties or imposts upon goods and merchandize for the particular benefits of their respective States, thus drawing revenues from those whose local circumstances will not admit of their enjoying similar advantages."

In instructions to the representatives in Congress, given March 2d, 1786, it was said, "when the revenue system of the 19th of April, 1783, was passed in Congress, we were in hopes that our situation between two commercial States would no longer operate to our detriment; and that those States, and others in their predicament, were at length convinced of the selfish and palpable injustice

Beside this failure, the requisitions of Congress for direct contributions from the States, were but partially complied with; the government was compelled to resort to loans to pay even the interest on the foreign debt, and the interest on the domestic debt remained wholly unpaid.

The western territory, or "Crown lands" were viewed by the people of the States as a fund to aid in the payment of the public debt. The expectations and wishes of New Jersey in reference to these lands, have already been noticed. In October, 1780, a resolution was adopted by Congress recommending the States to make liberal cessions of their territorial claims. In 1781, this was complied with by Virginia so far as to cede all lands northwest of the river Ohio, upon the condition however, that Congress should guaranty all the other lands she claimed. This cession was not satisfactory to other States. New Jersey presented a remonstrance stating "the just and incontrovertible claim of this State to its full proportion of all vacant territory," and requesting

of subjecting others to their exactions, and then applying those exactions to the augmentation of their respective private revenues. As we are convinced that neither public credit can be supported, the public debts paid, or the existence of the Union maintained, without the impost revenue in some form, you are instructed to vote against each and every ordinance, resolution, and proceeding whatever, which shall produce any expense to New Jersey, for the promotion or security of the commerce of those States, or any of them, from which the Union in general, nor this State in particular, derives any advantage, until all the States shall adopt and carry into execution the impost above mentioned. To vote against each and every ordinance, resolution, or proceeding which shall tend to charge this State with any expense for gaining possession of, or defending such territory claimed by, or which is to accrue to, the exclusive benefit of any particular State or States, and not to the Union at large."

The resolution of the House declining to comply with the requisition for the payment of specie, was noticed by Congress, and was a source of so much embarrassment that a committee consisting of Charles Pinckney, Nathaniel Gorham, and William Grayson were appointed to remonstrate with the Assembly of New Jersey upon the subject. The committee were heard. The House then resolved, "that being willing to remove as far as in their power every embarrassment from the counsels of the Union, and that the failure of supplies from temporary demands, though clearly evinced from experience, may not be imputed to the State of New Jersey only, that the resolution of the 20th of February last, be, and hereby is rescinded."

Congress not to accept of the offer. The proposal of Virginia was rejected by Congress with the annexed condition; but this condition being given up, the cession was afterwards accepted. Congress urged also upon other States the necessity of early and full compliance, and accordingly cessions were made by all the States having claims to these lands, so that the whole territory northwest of the Ohio came to be possessed by the United States. But the advantages to be derived from this possession, were chiefly prospective, this fund could not be made available to meet the immediate wants of the country.

The situation of affairs at this period was such as to excite a doubt whether the United States would be able to maintain their nationality. The general government was found to be entirely destitute of all authority to carry its measures into effect. During the continuance of the war, the pressure of common danger had enforced a general concurrence of action, though even then, the measures of Congress were often defeated by the objections or the inaction of the States; now, the power of Congress was scarcely more than a nominal thing; as was aptly said, "they may declare every thing but do nothing." There seemed to be an increasing jealousy of the general government, and a desire to establish the interests and power of the States. The obligations arising out of the treaty of peace were not enforced without the greatest difficulty, and loud complaints of infractions were made by Great Britain; there was no authority to regulate commerce, no national judiciary, nor any general provision for mutual support in cases of insurrection within the States; and this latter defect was brought more strongly into view by actual and serious disturbances.¹⁵ These circumstances were the cause of extreme uneasiness; the wisest as well as the strongest spirits of the time, were oppressed with a feeling of apprehension. Washington declared, in reference to the disinclination of the States to yield competent powers to the general government, that "we have opposed the British in vain, and have arrived at the present state of peace and independency to very little purpose, if we cannot con-

¹⁵ An insurrection of a truly formidable character took place in Massachusetts in the year 1786.

quer our own prejudices." Jay said, in March, 1786, "I think we are in a delicate situation, and a variety of considerations give me uneasiness; our affairs are drawing to some crisis, some revolution, something I cannot foresee or conjecture; I am anxious and uneasy, more so than during the war." "Your views," said Washington in reply, "accord with my own; what the event will be, is also beyond my foresight; I do not conceive we can exist long as a Nation, without lodging somewhere a power which will pervade the whole Union in as energetic a manner as the authority of the State governments extend over the several States." Governor Livingston said, in February, 1787, "I am really more distressed by the posture of our public affairs than I ever was by the most gloomy appearances during the war, and without the utmost exertions of the more patriotic part of the community, and the blessing of God upon their exertions, I fear we shall not be able for ten years from the date of this letter, to support the independence which has cost us so much blood and treasure to acquire."

Fortunately, or providentially, the proper and the only remedy for the evils and disorders of the time was perceived and applied. The foresight of Washington, though distrusted by himself, had not failed; and measures were soon taken to establish the power which should "pervade the whole Union." In January, 1786, the legislature of Virginia appointed persons to meet Commissioners from the other States, to take into consideration the state of the country, and to devise measures for the common interest.¹⁶ The other States were notified of this movement, and on the 20th of March a resolution was adopted by the legislature of New Jersey, that Commissioners should be appointed in joint meeting to meet Commissioners from the other States for the purposes

¹⁶ They were "to meet such other Commissioners as were, or should be, appointed by the other States in the Union, at such time and place as might be agreed upon, to take into consideration the trade and commerce of the country, to consider how far an uniform system in their commercial intercourse and regulations might be necessary to their common interests and permanent harmony, and to report to the several States such an act relative to this great object, as, when unanimously ratified by them, would enable the United States, in Congress assembled, effectually to provide for the same."

mentioned. Abraham Clark, William C. Houston, and James Schureman were appointed. The Commissioners met at Annapolis, in September, 1786, but five States only were represented.¹⁷ After some consideration of the subject of the meeting, the delegates agreed that their powers, as well as their numbers, were too limited to warrant a final decision, but they agreed to a report to be submitted to Congress, and to the several States. In this report they recommended the appointment of Commissioners from all the States "to meet in Philadelphia on the 2d Monday in May next, to take into consideration the situation of the United States; and to devise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the *exigencies of the Union*." Congress approved of the measures taken, and recommended to the States that the Convention should be held as proposed. Virginia first appointed delegates to this meeting, at the session of the legislature held in October, 1786. New Jersey followed next: on the 24th of November, David Brearly, William C. Houston, William Paterson, and John Neilson were appointed. On the 19th of May, 1787, his Excellency William Livingston and Abraham Clark were added to the delegation, (the name of John Neilson being omitted,) and on the 7th of June it was further increased by the appointment of Jonathan Dayton.

The meeting and the proceedings of this Convention, which met at the appointed time, mark a most important era in the history of the United States. A form of government was constructed to take the place of the Confederation, (which was already almost dissolved,) and the work was devised with the highest degree of wisdom and skill. Separate and apparently opposing interests and elements were brought together and joined in an harmonious union. The Constitution was formed. In this work the representatives of New Jersey were active and useful participants. Their influence and efforts were partly directed to preserve to the smaller States, New Jersey being one, a proper degree of power and weight in the Union; whilst they wished the general authority to be sufficient for the purposes in view, they

¹⁷[New York, New Jersey, Pennsylvania, Delaware, and Virginia.

were desirous to guard the relative interests of the several parts. It was supposed by them, that this object, and indeed that the several objects proposed, might be fully reached by a modification in the form of the existing government. Their views were presented to the Convention in what was called "the Jersey plan," which was arranged by the delegates of that State, those of Connecticut, Delaware, and a portion of the delegation from Maryland.¹³ This plan was not adopted, the Convention resolving that

¹³On the 15th of June, Mr. Paterson offered to the Convention the following propositions, as amendments of the articles of confederation: "1st, That the articles of confederation ought to be revised, corrected, and enlarged, so as to render the federal constitution adequate to the exigencies of government and the preservation of the Union. 2d. That, in addition to the powers vested in the United States, in Congress, by the present existing articles of confederation, they be authorized to pass acts for raising a revenue, by levying a duty, or duties, on all goods and merchandize of foreign growth or manufacture imported into any part of the United States; by stamps on paper, vellum, or parchment, and by a postage on all letters and packages passing through the general post office, to be applied to such federal purposes as they shall deem proper and expedient; to make rules and regulations for the collection thereof; and the same, from time to time, to alter and amend in such manner as they shall think proper. To pass acts for the regulation of trade and commerce, as well with foreign nations as with each other; provided that all punishments, fines, forfeitures and penalties to be incurred for contravening such rules and regulations, shall be adjudged by the common law judiciary of the States in which any offence contrary to the true meaning of such rules, shall be committed or perpetrated, with liberty of commencing, in the first instance, all suits or prosecutions for that purpose in the superior common law judiciary of such States, subject, nevertheless, to an appeal, for the correction of all errors, both in law and in fact, in rendering judgment, to the judiciary of the United States. 3d. That whenever requisitions shall be necessary, instead of the present rule' the United States, in Congress, be authorized to make such requisitions, in proportion to the whole number of white or other free citizens or inhabitants, of every age, sex and condition, including those bound to servitude for a number of years, and three-fifths of all other persons not comprehended in the foregoing description, except Indians, not paying taxes; that if such requisitions be not complied with in the time to be specified therein, to direct the collection thereof in the non-complying States; and for that purpose to devise and pass acts directing and authorizing the same; provided that none of the powers hereby vested in Congress shall be exercised without the consent of at least ——— States, and in that proportion, if the confederated States should be hereafter

the old form of government was not susceptible of such alteration and amendment as would render it sufficient for the purposes designed. But the new plan was so framed as to preserve in a degree the feature had in view by the representatives of New Jersey.

increased or diminished. 4th. That the United States, in Congress, be authorized to elect a federal executive, to consist of — persons—to continue in office for the term of — years—to receive punctually, at stated times, a fixed compensation for the services by them rendered, in which no increase or diminution shall be made, so as to affect the person holding the executive office at the time such alteration is made, to be paid out of the federal treasury—to be incapable of holding any other office or appointment during their term of service, and for — years thereafter; to be ineligible a second time, and removable on impeachment and conviction for malpractices, or neglect of duty, by Congress, on application by a majority of the executives of the several States; that the executive, besides a general authority to execute the federal acts, ought to appoint all federal officers not otherwise provided for, and to direct all military operations; provided that none of the persons composing the federal executive, shall, on occasion, take command of any troops, so as personally to conduct any military enterprise, as general, or in any other capacity. 5th. That the federal judiciary be established to consist of a supreme tribunal, the judges of which to be appointed by the executive, and to hold their office during good behaviour—to receive punctually, at stated times, a fixed compensation for their services, in which no increase or diminution shall be made, so as to affect the persons in office at the time of such change; that the judiciary so established, shall have power to hear and determine, in the first instance, on all impeachments of federal officers, and by way of appeal, in the dernier resort, in all cases touching the rights and privileges of ambassadors—in all cases of captures from an enemy—in all cases of piracies and felonies on the high seas—in all cases in which foreigners may be interested in the construction of treaties, or which may arise on any act or ordinance of Congress for the regulation of trade, or the collection of the federal revenue; that none of the judiciary officers shall be capable, during the time they remain in office, of receiving or holding any other office or appointment during their term of service, or for — years thereafter. 6th. That the legislative, executive, and judiciary powers within the several States, ought to be bound by oath to support the articles of union. 7th. That all acts of the United States, in Congress assembled, made by virtue and in pursuance of the powers hereby vested in them, and by the articles of confederation, and all treaties made and ratified under the authority of the United States, shall be the supreme law of the respective States, as far as those acts and treaties shall relate to the said States or their citizens—and that the judiciaries of the several States shall be bound thereby in their decisions, anything in the respective laws of the individual States to the contrary notwithstanding; and if any State, or

The government was constituted so as to be partly federal and partly national; it was not to be composed of a mere aggregation of separate parts, but these parts *at certain points* were fused into one body; yet except at these points distinctness was preserved. A positive rule was established which was to operate upon all, and which within its sphere of operation was wholly to supersede the discretion or will of the States; yet beyond this sphere, the integrity and authority of the States were maintained. By this means a government was formed which whilst it pervaded the whole Union with such force as to ensure successful action, left all that was local in character to be controlled by the local authorities. The instrument being completed, it was signed in September, 1787, by the members of the Convention, and submitted for approval and adoption.¹⁹ The Convention resolved that the Constitution should be laid before the United States in Congress assembled, and that in the opinion of the Convention it should afterwards be submitted to a Convention of delegates chosen in each State by the people thereof, under a recommendation of its legislature, for their assent and ratification. It was also resolved, that in the opinion of the Convention, as soon as nine States shall have ratified the Constitution, the United States in Congress as-

any body of men in any State, shall oppose or prevent the carrying into execution such acts or treaties, the federal executive shall be authorized to call forth the powers of the confederated States, or so much thereof as be necessary to enforce and compel obedience to such acts, or an observance of such treaties. 8th. That provision ought to be made for the admission of new States into the Union. 9th. That provision ought to be made for hearing and deciding all disputes arising between the United States and an individual State, respecting territory. 10th. That the rule for naturalization ought to be the same in every State. 11th. That a citizen of one State, committing an offence in another State, shall be deemed guilty of the same offence as if it had been committed by a citizen of the State in which the offence was committed."

¹⁹Thirty-nine of the fifty-five members who attended the Convention, signed the Constitution. Of the remaining sixteen, some were in favor of it, but were obliged to leave the Convention before the instrument was ready for signing. It was signed by all the members from New Jersey, except Abraham Clark. The list of names, however, varies in different places. In that given in the report of the delegates to the Legislature, besides the one just mentioned, the name of William C. Houston is also omitted.

sembled should take measures for the election of a President, and appoint the time and place for commencing proceedings under the new Constitution.

In accordance with the resolution of the Convention, the Constitution was laid before Congress, and that body unanimously agreed that the instrument should be transmitted to the several States for their action thereon. On the 26th of October, 1787, the delegates to the Convention from New Jersey reported the proceedings of the body to the legislature, with a copy of the Constitution and the accompanying resolutions. On the 27th the legislature resolved, that it should be recommended to such of the inhabitants of the State as were entitled to vote for Representatives in the General Assembly, to meet in their respective counties at the places fixed by law for holding elections, on the fourth Tuesday in November next ensuing, to choose three persons to serve as delegates from each county in a State Convention; that the delegates so chosen should meet in Convention on the second Tuesday in December, to consider and decide upon the Constitution, and that the Sheriffs of the respective counties should give timely notice to the people, of the time, place, and purpose of holding the elections. These resolutions were embodied in an act authorizing the people of the State to meet and act in Convention, which act was passed on the 30th of October.²⁰ In pursuance of these provisions, elections were held in each of the counties, and the delegates chosen met in Convention at the time and place appointed, and on the 18th of December, 1787, the Constitution was unanimously accepted and ratified.²¹ New Jersey was the third State

²⁰ Votes, vol. 7, p. 25.

²¹ John Stevens was chosen President of the Convention, and Samuel W. Stockton, Secretary. It was agreed that the Constitution should be read and considered by sections; but scarcely any debate took place, and no amendment was proposed. The whole having been read, the general question was taken, "whether this Convention, in the name and in behalf of the people of this State, do ratify and confirm the said Constitution?" it was determined in the affirmative unanimously. The Convention also resolved that "it is the opinion of this Convention that the State of New Jersey should offer a cession to Congress of a district not exceeding ten miles square, for the seat of government of the United States, over which they may exercise exclusive jurisdiction."

Minutes of Convention.

to adopt the Constitution, being only preceded by Delaware and Pennsylvania.

The proceedings of the State Convention were communicated to the legislature at a special meeting, on the 28th of August, 1788, by a letter from the Secretary of the Convention, with a copy of the minutes. A communication on the subject was also received from the Governor. His Excellency said, "I most heartily congratulate you on the adoption of the Constitution proposed for the government of the United States, by the Federal Convention, and it gives me inexpressible pleasure that New Jersey has the honor of so early and so unanimously agreeing to that form of National Government which has since been so generally applauded and approved of by the other States. We are now arrived to that auspicious period which, I confess, I have often wished that it might please Heaven to protract my life to see. Thanks to God that I have lived to see it."

According to the Constitution, the National Legislature was to consist of Senators and Representatives. Two Senators were to be chosen in each State by the legislature thereof for six years.²² The Representatives in each State were to be chosen by the people, the number to be in proportion to the population, but until an enumeration should be made, and the respective numbers thus determined, a specific apportionment was made. New Jersey was to have four. Electors of President were to be appointed in such manner as the legislature should direct, and to be equal in number to the whole of the Senators and Representatives.

The ratification of the Constitution by the necessary number of States having been communicated to Congress, an act was passed on the 13th of September, 1788, for carrying the system into effect; by this act the Electors of President were to be appointed on the first Wednesday in January, 1789, and to give their votes on the first Wednesday of the succeeding February, and the legislative bodies were to meet at New York on the first Wednesday in March, 1789. The several measures contemplated, were taken in

²² Upon their meeting, the Senators were to be classified—the seats of the first class to be vacated in two years, the second in four years, and the third in six years.

New Jersey. On the 25th of November, 1788, William Paterson and Jonathan Elmer were chosen by the legislature in joint meeting, to represent and vote on behalf of the State in the Senate of the United States, and Representatives in Congress, and Electors of President were chosen according to the provisions made in the case.²³

At the time appointed, Senators and Representatives appeared from eleven of the States, but a quorum of both houses did not attend until the 6th of April. Upon counting the Electoral votes, it appeared that George Washington was unanimously chosen President, and that John Adams was elected Vice President. Upon being informed of his election, the President immediately repaired to the seat of government and entered upon the duties of his elevated office. Soon after their meeting, the legislature of New Jersey prepared an address to the President, congratulating him upon his appointment, and assuring him of their willingness to support him in the due execution of the laws, and in the preservation of public tranquillity.

Among other important matters, the subject of amendments to the Constitution was brought before Congress at their first sitting by petitions from Virginia and New York, asking that another Convention might be held for a fuller consideration of several particulars, and for preparing amendments. The States just mentioned were opposed to the Constitution without some alteration. But according to previous agreement, the instrument had already come into force, and Congress had no authority to call another Convention; but amendments might be made and proposed to the States for their adoption. This was now done. After full consideration and discussion, twelve articles were agreed to by Congress as amendments. These articles were brought before the legislature of New Jersey by a message from the Governor, on

²³ At the same time that the Senators were appointed, Abraham Clark, Jonathan Elmer, and Jonathan Dayton were appointed Representatives in Congress, to serve until the 4th of March ensuing, (at which time the new government was to go into effect,) unless others should be appointed in the mean time. On the 28th, an act was passed providing for the election of Representatives in Congress by the people.

the 29th of October, 1789, and the subject was acted upon by agreeing to all the articles except the second.²⁴

During its session the Congress agreed upon measures for the establishment of a revenue to support the government and discharge the public debts; duties were laid for these purposes upon imports, and on the tonnage of vessels. The several departments of government were arranged and established, a national judiciary was erected, and the salaries of the several officers of government determined. The houses adjourned on the 29th of September, to meet on the 6th of January, 1790. A most important as well as difficult subject of consideration of the second session, was that relating to the public debt, and especially as to the assumption of the debts of the States incurred in the prosecution of the war. After animated debate, a law was passed on the 4th of August making provision for the debt of the United States, by which act a specific amount (twenty-one millions,) of State debts was assumed. This sum was apportioned among the States with regard to the amount of the debts of each. Eight hundred thousand dollars was apportioned to New Jersey.²⁵ The sum thus assumed was to be loaned to the United States at determined rates of interest by individuals holding certain evidences of States debts.

During the session of the legislature of New Jersey in 1790, further enactments were made in order to complete and perpetuate the relations between the State and the Federal Union. On the

²⁴ Ten of the articles submitted to the States were confirmed by two-thirds of the States, as required by the Constitution. The first and second articles, which related to the number of the House of Representatives, and to the compensation of the members of the houses, were rejected. Another amendment of the Constitution, relating to the manner of electing the President and Vice President, which was recommended by Congress to the States, was ratified in New Jersey, by an act of the 27th of February, 1804.

²⁵ By message from the Governor, on the 25th of November, 1791, it appeared that the commissioner of taxes for New Jersey had completed his estimate of the debt of the State, subscribed to the loan proposed by the United States, and that it then did not quite amount to six hundred thousand dollars, but as it was supposed that many persons had been prevented from coming in to subscribe, a resolution was adopted by the Legislature, that an application should be made to Congress for an extension of the time prescribed for the subscription.

12th of November an act was passed directing particularly the manner of appointing Senators, and Electors of President and Vice President.²⁵ An additional enactment was also made regulating the mode of electing Representatives in Congress.

The place for the permanent establishment of the government was also selected; by act of the 25th of November, it was provided that Trenton, in the county of Hunterdon, should henceforth be considered as the seat of the government of the State. At this period a change took place in the administration of government. Governor Livingston had remained in office from the time of the first establishment of the government; he had continued steadily at his post during the difficult and perilous season of the war; he had assisted in framing the general government, and used his influence in favor of its adoption, and at length, as the fulfilment of his hopes, and the reward of his services, witnessed the complete establishment of the independence, and the Union of the States. He died on the 25th of July, 1790. He was succeeded by William Paterson, who was elected on the 29th of October, and who continued in office until March, 1793, when he resigned in consequence of his appointment to the place of Associate Judge of the Supreme Court of the United States. He was succeeded by Richard Howell.

The civil and political history of the State of New Jersey, though merged from this period to a greater degree than before in that of the United States, is still of interest and importance. Yet the merest summary only can here be given.²⁷

Governor Howell continued in service until October, 1801, when Joseph Bloomfield was appointed, who then served but for a single term. In 1802, there being no choice of Governor, John Lambert, the Vice President of Council, performed the duties of the office for that year, but, in the following year, 1803, Governor Bloomfield was re-elected, and remained in office until 1812. He

²⁵ See Paterson's Laws, p. 102. In December, 1807, an act was passed providing for the choice of Electors of President and Vice President, by popular election, and also further providing for the election of Representatives in Congress.

²⁷ The limits allotted for the present work being already much exceeded, the author is compelled to refrain from all details, and give only a few of the leading occurrences of the remaining period.

was then succeeded by Aaron Ogden, who in the following year gave place to William S. Pennington. Governor Pennington was followed in 1815 by Mahlon Dickerson, and the latter in turn was succeeded in 1817 by Isaac H. Williamson. Governor Williamson remained in office until 1829, when Garret D. Wall was appointed; but he declining to serve, a new election took place a few days afterwards, and Peter D. Vroom was chosen. By annual re-election, Governor Vroom was continued in the place until 1832, and was then followed by Samuel L. Southard. In February, Governor Southard being chosen to the United States Senate, on the 27th Elias P. Seely was elected Governor; but in the following year Governor Vroom was again chosen, and remained in office until 1836, when he was succeeded by Philemon Dickerson. The next year William Pennington was chosen, and was continued in office until 1843, and was then followed by Daniel Haines.

At the close of the Revolutionary war, there were thirteen counties in New Jersey.²⁸ The subsequent advance in population and business, rendered it necessary to establish new divisions, and six other counties have been added. The county of Warren was erected in 1824, Passaick and Atlantic in 1837, Mercer in 1838, Hudson in 1840, and Camden in 1844. All these were clothed at once with the same privileges and powers that were possessed by the older counties.

The government of the State, although established in haste, and at a period but little favorable to deliberation and care, was found so far suited to the wishes and wants of the people that no earnest exertions were made for any alteration. So early as 1790, indeed, a proposition was considered in the legislature to choose a Convention for the purpose of revising the Constitution, and at subsequent periods similar movements were made. But these measures were not pursued at the time, and a decided manifestation of sentiment did not occur until the year 1843. At that time meetings were held in various places within the State, to consider the subject and to make a proper expression of opinion in relation to it; and

²⁸ Bergen, Essex, Middlesex, Monmouth, Somerset, Burlington, Gloucester, Salem, Cape May, Hunterdon, Morris, Cumberland and Sussex.

with similar objects, publications were put forth and circulated among the people. The mark of colonial dependence which was yet retained in the provision for a return to a connexion with Great Britain, although it could now have no possible practical bearing, and therefore could hardly be made a matter of serious objection, was yet offensive to the feelings, and thus probably gave strength to the desire for a revision or complete abrogation of the existing instrument. But the undue amount of authority given to the legislature; the improper union of powers in the person of the executive; the imperfect organization of the judiciary, and the restrictions upon the electors, and the elected, in the property qualifications required of them, were especially objected to, and urged as reasons for a change. Some of these objections indeed, were somewhat more formidable in appearance than in fact, and others had been removed in part by legislative provision. But it was urged that defects should be removed if practicable, even if not productive of serious injury; and the relief that was obtained by legislative interference, whilst it was readily accepted, was yet considered as strengthening the objections against the instrument itself. If the provisions of the Constitution, it was said, were such that it had become necessary to violate them, it was full time that an alteration should be made. At the session of the legislature commencing in October, 1843, numerous petitions were presented asking that an enactment might be made to call a Convention of the people to revise and alter the Constitution. By a number of persons the idea was held, that the object proposed might be fully and properly attained by the immediate action of the legislative bodies; whilst others were of opinion that the question as to calling a Convention of the people should first be submitted to a popular vote. The subject was adverted to by Governor Haines, (who had been elected to office soon after the meeting of the legislature,) in a message of the 10th of January, 1844. He said, "you will allow me to remind you that the formation or alteration of the fundamental law of a State, is the province of the people in their highest sovereign capacity, and not the duty of the legislature, who are delegated to act in obedience to that fundamental law. The same voice that asks a change of the Constitution, asks that change through the medium of a Convention; and

instructs us to fix by law, the time, place, and manner of forming it. A law, therefore, calling a Convention of a suitable number of delegates, at as short a time and little expense as the importance of the measure will justify, I believe to be both proper and necessary. If the will of the people has been misunderstood, they can so express it by instructions to their delegates. I commend the subject to your early consideration and prompt and efficient action."

The matter was held under consideration by the legislature until the 23d of February, 1844, when a bill was passed by the Assembly entitled "An act to provide for the calling of a Convention to frame a Constitution of the State, to be submitted to the people thereof for ratification or rejection."²⁹

The law provided that an election for delegates to meet in Convention should be held in the counties on the 18th of March; the number chosen to be equal to the number of members of the General Assembly, and they were to meet on the 14th of May next ensuing. The instrument formed in Convention was to be submitted to the people for their final decision on the 2d Tuesday in August. Before the close of the session, the members of the legislative bodies, acting extra officially, (together with other individuals of influence in the State,) came to a resolution recommending to the people of the counties to hold preparatory meetings, and to nominate by common agreement and assent, persons from the different political parties, as delegates to the Convention; and an arrangement was proposed which would secure the election of an equal number from each of the parties. The recommendation thus made, proceeded from an elevated sense of public duty, and a willingness to forego all considerations arising from the interests or views of party, in order to secure harmonious action in an effort for the general good. This measure, so honorable to the actors, and to the State, was acceded to (with a single exception) and carried out by the people. The delegates were selected and chosen in the manner proposed, and the Convention met according to appointment on the 14th of May, 1844. Fifty-eight members were in attendance.

²⁹The bill passed, had come from the Council, and had been amended by the House, and the amendments were afterwards agreed to by the Council.

On entering upon the business of the Convention, some difference of opinion was found to exist in regard to the particular mode of procedure. Some of the members were disposed to limit their action to an amendment of the existing Constitution, making only such changes therein, as public opinion appeared to demand, or full examination might suggest; but others were inclined to a consideration of general principles, and the creation of distinct departments of government, with but little reference to any existing provisions. The latter mode was finally adopted. Hence a new instrument was formed. In this plan, the operation of government was more closely restricted by a fuller declaration of the rights and privileges that were retained by the people.³⁰ A participation in civil and political privileges was secured to a larger number, by a guaranty under constitutional provision of the right of suffrage to those who had formerly only enjoyed it by legislative enactment. The different departments of government were entirely separated. The legislative department was made to consist as before, of two bodies, their numbers to continue the same until the next census should be taken; but the Council to take the name of Senate, and the members to be elected for three years. The property qualification of the members of the legislative houses required by the former Constitution, was wholly removed. The executive authority was vested in a Governor, to be elected by the people of the State, and to hold office for three years. He was to perform no legislative duties, but to have a qualified veto power upon the action of the legislative bodies. Except as a single member of a body with powers of a mixed character, no judicial authority was allowed to the Executive. The judicial department was fully established, both in respect to the character and number of courts, and the appointment and duties of officers. A Court of Errors and Appeals in the last resort, was provided for; a Court of Impeachment; a Court of Chancery; a Prerogative Court; a Supreme Court; Circuit Courts, and such inferior courts as were existing at the time. All these were to be permanent, except the

³⁰The enumeration of rights and privileges was made in nineteen articles, embracing a sufficient scope to give ample security to the liberties of the citizens.

last, which might be changed or abolished at the discretion of the legislature.³¹

In the scope of authority given to the government, in the mode of appointing officers, and in the distribution of powers, as well as in several minor particulars, the Constitution now framed was so different from the former, that it may truly be considered as a new organization. The entire amount of power possessed by the government, was lessened, and the relative condition and strength of the parts were greatly changed. The legislature had formerly been able to exercise the principal control; it had been the immediate source of authority to the other departments, but now, the Executive was wholly independent of the legislature, in origin, and the judiciary branch was only dependent in part.

In accordance with the law, the Constitution was submitted to the people on the second Tuesday in August for their adoption or rejection. It was found to be generally approved, being adopted by a very decided vote.³² It thus became the fundamental law of

³¹ The Court of Errors and Appeals which formerly was composed of the Governor and Council, was now to consist of the Chancellor, the Justices of the Supreme Court, and six Judges, which Judges were to be appointed for six years. This Court was thus made higher, by the judicial character of the members, and more permanent from the extension of the term of office. The powers belonging to the "Court of Pardons," which had been exercised by the Governor and Council, were vested in the Governor, the Chancellor, and the six Judges of the Court of Errors and Appeals, or a major part of them. This body might remit fines and forfeitures, and grant pardons after conviction, in all cases except impeachment. The duties of Chancellor and Ordinary, formerly performed by the Governor, were now assigned to a separate officer. A change was also made in the mode of appointing judicial officers. Under the former Constitution, all these appointments were made by the legislative bodies in joint meeting. Now the Justices of the Supreme Court, the Chancellor, and the Judges of the Court of Errors and Appeals, were to be nominated by the Governor, and appointed by him, with the advice and consent of the Senate—Justices of the Supreme Court and the Chancellor to hold their offices for seven years—Judges of the Courts of Common Pleas to be appointed by the Senate and General Assembly in joint meeting, and commissioned by the Governor—Justices of the Peace to be elected by the people.

³² The whole number of votes was 23,871. Of these, 20,276 were for the Constitution, and 69 ballots were rejected. Majority, 16,750.

the State, and so far as any may judge, its operation can hardly fail to be favorable to the best interests of the people. Being entered upon under the influence of the most liberal views, and executed by a body of men distinguished for intelligence, the work exhibits a full acquaintance with the advances that have been made in political science, and yet is entirely free from the extremes which are sometimes produced by the bias of party, or an excessive zeal for reform. The framers were not so much desirous that the plan should excite admiration for its boldness or novelty, as that it should meet commendation for its usefulness, and its adaptation to the interests and the wants of the people.

In pursuance of the provisions agreed upon, an election was held for Governor and other officers in October, 1844. The Hon. Charles C. Stratton was then elected Governor; he continued in office until 1847, when Governor Haines, who had been the last in office under the old Constitution, was elected under the new. He is the present incumbent.

New Jersey has reason for grateful exultation. Her past history is without a stain, and her present and prospective condition is almost all that any can desire. From the character of her institutions and her other advantages, the people have come to be possessed of the means of prosperity and happiness, to as full an extent as they are held in any community, either in our own country, or in the world.

APPENDIX.

NOTE A, PAGE 390.

Records not in possession of the author at the time the subject was adverted to in the work, have since been examined, which show, that the movement in New Jersey, in support of the people of Boston, was very general, and in many instances of a formal character. In the county of Gloucester, committees were appointed in each of the townships, to receive donations "for the relief of our suffering brethren in Boston," and a general treasurer (Joseph Ellis,) was appointed, who was authorized to procure a place to store the provisions that should be furnished; and the sum of five hundred and thirty-four dollars in money, was at one time ordered to be paid on account of subscriptions.

Communication in Woodbury Constitution, by Dr. Fithian.

NOTE B, PAGE 402.

From the source indicated in the foregoing note, the following extracts have also been obtained, which exhibit in detail the action of the people in the appointment of delegates to the first Provincial Congress:

"At a meeting of the majority of the Committee of Correspondence for the county of Gloucester, on the 5th day of May, 1775—present, Samuel Harrison, Chairman; John Hinchman, John Cooper, John Sparks, Joseph Ellis, Joseph Low, Isaac Mickle, Joseph Hugg.

"In consequence of intelligence received from the Committee of Correspondence from New Brunswick, and at their request, the committee above named have taken the same into consideration, and do unanimously agree and think it our indispensable *duty* in this alarming crisis, forthwith to request a meeting of the inhabitants of this county, for the purpose of choosing members to meet at the Provisional Congress, at Trenton, on the 23d day of this instant, May.

"Ordered, That the Clerk get a number of notices immediately printed, and disperse them throughout the county—that a person be sent express to Eggharbour with part thereof, and alarm the inhabitants of the consequence thereof, and the necessity of a meeting. By order of Committee.

JOS. HUGG, Com. Clerk."

"Committee met pursuant to adjournment, on the 10th inst., at the house of William Hugg—present, Samuel Harrison, John Cooper, Joseph Ellis, John Sparks, Isaac Mickle, Doc. Vanleer, Joseph Cooper, Peter Cheesman, Joseph Hugg.

"In Committee, Ordered, That every member of this committee meet at the house of William Hugg, on the 18th instant, by 10 o'clock A. M., and that notice issue for that purpose—to which time this Committee is adjourned. By order of Committee.

JOS. HUGG, Clerk."

"At a meeting of a very respectable number of the inhabitants of this county, on the 18th day of May, Anno Domini 1775, pursuant to a notice from the Committee of Correspondence, for that purpose:

"At said meeting the inhabitants taking into consideration the intelligence communicated from the Committee of Correspondence of New Brunswick, do unanimously

"Resolve, That it is highly necessary that there should be a Provincial Congress held at the time and place appointed by the said Committee; and do unanimously

"Resolve and agree, that seven persons be chosen for said service, to represent this county.

"And accordingly Robert Friend Price, John Hinchman, Elijah Clark, Esqrs., and Messrs. John Cooper, Joseph Ellis, John Sparks, and Joseph Hugg were unanimously chosen, to continue for twelve months, and any three or more attending said meeting, to be a sufficient representation.

"Ordered, That the members attending from this county, do use their endeavors when met in Congress, to confirm and re-appoint the delegates appointed by the General Assembly of this Province.

"Ordered, That the instructions drawn by Mr. Cooper, for said Provincial Congress, be taken by the members of this county, to said Congress, for their own guide—but not to be published.

"On the question being put, whether the Committee of Observation be authorized to carry into execution the resolves of the Provincial Congress, and to perform such services as the emergency of the case may require, it was resolved nem. con. By order of the county.

JOS. HUGG, Clerk.

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